PETHERAM
ON
INTERROGATORIES.

Chas. Harcourt
1865.

THE

LAW AND PRACTICE

RELATING TO DISCOVERY BY

INTERROGATORIES

UNDER THE COMMON LAW PROCEDURE ACT, 1854;

TOGETHER WITH AN APPENDIX OF

PRECEDENTS, AND FULL INDEX.

BY

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PREFACE.

THE great and increasing importance of interrogatories in actions at law has induced me to collect whatever of recognised authority exists on the subject, and to add a selection of forms of interrogatories which have been allowed by the Judges sitting at Chambers. A perusal of the following pages will show that considerable difference of opinion has existed among the judges as to the proper meaning to be put on the words of the section of the Common Law Procedure Act under which interrogatories are administered; and an attentive examination of the forms in the Appendix will show that individual judges have given to the section a wider meaning than has ever been given by the full courts. I think, however, that from the decisions quoted in the text, and from the examples in the Appendix, enough can

be gathered to enable the reader to judge, with some approach to certainty, what questions will be allowed; and I offer this little volume to the members of the profession, in the hope that it may be found not altogether useless to them in conducting this branch of their practice. I may here state that since the body of this work has been printed, I have been informed by Mr. Brandon, the registrar of the Lord Mayor's Court, that an application was lately made to him for leave to administer interrogatories to the garnishee under the custom of foreign attachment; it was opposed on several grounds, first, because, it was said that the garnishee was not a "defendant," properly so called, and also because it was objected that the registrar had no power to make the order under the section. He, however, made the order, and the Recorder afterwards affirmed it, which decision would appear to be entirely borne out by the cases of *Fliteroft* v. *Fletcher*, and *White* v. *Watts*.

5, Paper Buildings,
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CHAPTER I.

INTERROGATORIES UNDER THE ACT.

By the Common Law Procedure Act, 1854, 17 & 18 Vic. cap. 125, s. 51, it is enacted: "In all causes in any of the superior courts, by order of the court or a judge, the plaintiff may, with the declaration, or the defendant may, with the plea, or either of them by leave of the court or a judge may, at any other time, deliver to the opposite party or his attorney (provided such party, if not a body corporate,* would be liable to be called and examined as a witness upon such matter) interrogatories in writing upon any matter as to which discovery may be sought, and require such party, or, in the case of a body corporate, any of the officers of such body corporate, within

* The public officer of a joint-stock banking company may be interrogated under this section. (M'Kewen, P.O., *v.* Rolt, 28 L.J., 381 Ex.)

ten days to answer the questions in writing by affidavit, to be sworn and filed in the ordinary way; and any party or officer omitting, without just cause, sufficiently to answer all questions as to which discovery may be sought within the above time, or such extended time as the court or a judge shall allow, shall be deemed to have committed a contempt of the court, and shall be liable to be proceeded against accordingly."

The first question which can be made under the wording of this section is, what causes are included in it? And this question has been twice raised: the first time in the case of *Fliteroft* v. *Fletcher*, 25 L.J., 94 Ex., and the second time in *White* v. *Watts*, 31 L.J., 381 C.P.

Fliteroft v. *Fletcher* was an action of ejectment, and it was argued, that as the section stated that "the plaintiff might with the declaration, or the defendant might with the plea," deliver interrogatories, it was implied that interrogatories could be delivered in those cases only where a plea could be pleaded, therefore that no interrogatories could be delivered in the action of ejectment. The court, however, were of opinion that ejectment was within the section, and Alderson, B., said: "The act says interrogatories may be delivered at any time. The act ought, in this respect, to receive as large a construction as possible." See also *Edwards* v. *Wakefield*, 6 E. & B., 463, where this doctrine is affirmed.

White v. *Watts* was an interpleader issue, and that

was also decided to be within the section. Erle, C.J., in delivering judgment, said: "The question is, whether an interpleader issue is within the provision of the Common Law Procedure Act, 1854, s. 51, relating to the delivery of interrogatories. The section says that this may be done in all causes in any of the superior courts. I know of no legal definition of the word 'cause,' but it is obvious that the importance of delivering interrogatories is as great in interpleader issues as in any other case. We all think that an interpleader issue is within the principle of section 51, and my brother Willes has pointed out that section 50, which is *pari materiâ*, uses the words 'any cause or other civil proceeding.'" No other authorities are to be found on this branch of the subject, but from the two above quoted it would appear the courts will give the words "in all causes in any of the superior courts" as large a construction as possible. It has also been decided that it is no ground for refusing an order to administer interrogatories to a plaintiff that he is a foreigner resident abroad. *Pohl* v. *Young*, 25 L.J., 23 Q.B.

Interrogatories will be allowed to be administered at any time during the progress of the cause. If the application is made before the delivery of the declaration, a case of great urgency must be made out. See *Jones* v. *Platt*, 6 H. & N., 697; 30 L.J., 365 Ex.; and see also *Jones* v. *Hargreaves*, 29 L.J., 368 Ex., which was an application, under section 50 of the same act, for the inspection of documents; but, on examination, the argu-

ments used there will be found applicable to the section now under consideration. As a general rule, the proper time for the application is after issue joined, as the court or judge is then in a better position to form an opinion as to the relevancy of the proposed interrogatories. See *Jones* v. *Platt*, *ubi suprà*; see also, as to time, *Martin* v. *Heming*, 10 Exch., 478, 24 L.J., 3 Ex.; and *James* v. *Barnes*, 17 C.B., 596, 25 L.J., 182 C.P.

We now come to the question what interrogatories may be administered under the words "any matter as to which discovery may be sought;" and as this question has been a great deal discussed, and many very opposite opinions given as to its meaning since the passing of the act, we shall here examine carefully all the cases which have been decided on the subject, and then endeavour, by the assistance of the light they give, to determine what meaning is now to be put on these words. Looking at the section, it seems evident that the words "as to which discovery may be sought," must have reference to some mode of obtaining discovery which was in existence before the passing of the enactment; and this causes an immediate search for any such methods which may have been in existence. The one which, from the presence of the word "discovery" in the section, first suggests itself, is that which was much in use before the passing of this act, —viz. by filing a bill in equity for a discovery in aid of proceedings at common law; and this opinion certainly would seem to hold its ground strongly

against the other which has been set up in opposition to it—viz. that the words mean that any questions may be asked under this section which might be put to a witness under examination in the witness-box. We will now review in the order in which they were decided all the cases in support of both opinions.

The first time any judicial opinion was expressed on the subject was in the case of *Martin* v. *Heming*, 24 L.J., 3 Ex., when, in the course of the argument, Alderson, B., said: "Surely the first requisite is, that it is a proper subject for discovery in equity;" but as the point was not actually before the court, this can only amount to an expression of opinion.

Osborne v. *London Dock Company*, 10 Exch., 698, 24 L.J., 140 Ex., is a case which for a long time was treated as of no authority, and, in fact, was almost looked upon as overruled; but it has since been brought again into notice by a decision of the Court of Common Pleas founded on its authority, viz. that in *Bartlett* v. *Lewis*, 31 L.J., 230 C.P., which will be fully noticed in its proper place. In consequence of that decision, the case of *Osborne* v. *London Dock Company* has come to be of considerable importance; it will, therefore, be necessary to review it somewhat fully. The case came before the court on an application by the defendants to deliver interrogatories in writing to the plaintiff. The declaration charged the defendants, in the first count, with detaining pipes and hogsheads of wine, the property of the plaintiff; the second was for a conversion of the same. The

third count stated a delivery by the plaintiff to the defendants of pipes &c. of wine, to be vatted by the defendants and kept by them for the plaintiff, and that by means of the negligence of the defendants the pipes &c. of wine were lost to the plaintiff.

The defendants pleaded to the first count, denying the detention; to the second and third, not guilty; to the second, a traverse of the plaintiff's property; and to the third, a traverse of the delivery and acceptance. The object of the interrogatories—which were 159 in number—was to show that fraudulent practices had been used with regard to the wines, and that wines of other parties had been fraudulently substituted for the wines delivered to the defendants, and that the plaintiff was privy to the frauds. The application was opposed by the plaintiff, supported by the oath of his attorney, on the grounds that the defendants were seeking to obtain evidence from the plaintiff of certain alleged fraudulent practices, for which the party guilty would be liable to be indicted. In the course of the argument, Parke, B., said: "The section does not relate to a bill of discovery in equity. The language of the section is, 'upon any matter as to which discovery may be sought,' not 'upon any matter as to which a bill of discovery will lie.' The plaintiff's time to object to the questions is when they are put to him, and when they pinch him." And per Alderson, B., also during the argument: "The practice relating to bills of discovery has nothing to do with the present question. The practice created by the new act is an

improvement on that relating to bills of discovery." The interrogatories were allowed, the court saying: "If any of the proposed interrogatories tend to criminate the plaintiff, the objection is not properly raised on the present application, but must be taken by the party himself on oath at the time the interrogatories are put."

Whateley v. *Crawford*, and *Carew* v. *Davis*, 25 L.J., 163 Q.B. 5; E. & B., 709, were two cases in which the questions were so similar that they were included in the same judgment; and as that was the first judgment containing anything amounting to a definition of what was to be considered the proper interpretation of the part of the section now before us, it will be necessary to review the decision very carefully. *Whateley* v. *Crawford* was an action against a surveyor for negligence in valuing and surveying certain estates, and for reporting that they were worth and were let for more than they really were, whereby the plaintiff was induced to lend more money on the estates than they realized when they were sold, and that thereby the plaintiff lost his money. The interrogatories which were desired to be administered to the defendant were partly as follows:

2. Did you in the month of August, 1852, receive instructions from Messrs. R. B. and Co., of &c., to inspect and value certain estates of J. A., situate, &c., and did you accept and act on such instructions?

5. After receiving the said instructions, did you personally visit and inspect the whole or any and

what part or parts of the said estates, and when was such inspection?

6. Did you take any and what steps to ascertain the amounts of the different rents payable by the respective tenants of the said estates for the premises in their respective occupation?

7. Did you apply to the said J. A. to know the amount of the said several rents?

8. Did you apply to the tenants of the said estates, or to any and which of them, for the respective amounts of the rents payable by them respectively for the houses, farms, and lands held by them, and when did you make such application?

9. Did you, as part of the before-mentioned instructions, receive from the said Messrs. R. and Co. a list of the various rents at which the several tenants of the said estates were supposed to hold the same?

10. Did you take any and what steps to ascertain whether the said list contained a true account of the rents, and state the result of such steps?

11. Was one of the farms to which the said instructions applied called "The Mill House Farm," and was the same then in the possession and occupation of R. S.?

12. Did you take any and what steps to ascertain at what yearly rent the said R. S. then held the said farm, and state at what rent did he then in fact hold the same, and your means of knowledge as to the amount of such yearly rent?

13. Did you make any and what report to the said

Messrs. R. and Co. as to the amount of the last-mentioned yearly rent, and upon what information was such report founded?

The 3rd and 4th interrogatories were questions as to what was or was not the duty of the defendant under the instructions, and they were struck out by consent during the argument, on the ground that the information sought by them was matter of law. *Carew* v. *Davis* was an action against attornies, for negligence in not defending an action which was brought against the plaintiff on two bonds. The interrogatories were to the same effect as those in *Whateley* v. *Crawford*. Lord Campbell, in delivering his judgment, said: "I come to the conclusion that the rule under the 51st section is, that the plaintiff may have discovery by interrogatories, the answers to which may reasonably be expected to advance the plaintiff's case, although the answers may also disclose what the defendant intends to set up by way of defence. The object of the section was to obviate the necessity of going for assistance into a court of equity, which brought great scandal on the administration of justice. But now, by section 51, a party is empowered to deliver to his opponent interrogatories in writing upon any matter as to which discovery may be sought. What interpretation are we to put upon those words? I interpret the meaning to be that interrogatories may be put with reference to any matter as to which discovery may be sought by any bill in equity. The rule is laid down rather widely by the Court of Exchequer, in

Osborne v. *the London Dock Company*, where it is said that the interrogatories may be administered to the same extent as if the party interrogated was a witness under examination at the trial. I think the true rule is, that such questions may be put as may reasonably be expected to produce answers tending to advance the case of the party who puts them. The rule on this subject has been very clearly laid down by that great jurist, Sir James Wigram, and I concur in that rule in the very terms in which he has laid it down. Whatsoever advances the plaintiff's case may be inquired into, though it may at the same time bring out matter which the defendant relies upon for his defence, but you shall not inquire into that which is exclusively matter of defence; that which is common to both the plaintiff and the defendant may be inquired into by either. That being the rule, the great bulk of the questions in both the cases which have been argued clearly fall within it, and the interrogatories are therefore lawful, and ought to be answered." After some further remarks, which it is unnecessary to quote, his lordship proceeded to add: "If this method of proceeding was likely to be abused we should certainly have a discretion to exercise for the purpose of checking such abuse, and preventing the vexatious use of this mode of procedure; but if there is no supposition of this sort, and the case falls within the statute, we are *bound* to grant the application." Wightman, J., in his judgment, said: "The analogy, no doubt, is to proceedings in equity, by which a discovery was sought

and obtained in aid of proceedings at law." Erle, J., concurred.

Fliteroft and others v. *Fletcher*, 25 L.J., 94 Ex., was an action of ejectment, and the application was on the part of the defendant to administer interrogatories to the plaintiff, the object of which was to find out in what right the plaintiff claimed to be entitled to the land in dispute, and also to discover through what links he traced his pedigree. (See post, p. 98, where the interrogatories will be found in full.) These interrogatories were allowed, on the express ground that they were such as would have been allowed by a court of equity on the authority of the *Attorney-General* v. *Corporation of London*, 2 M'N. & G., 247, and, therefore, although it is not laid down in the judgments that, the words in the section have reference to bills in equity, still it may be clearly inferred from them that such was the opinion of at least two of the judges—Pollock, C.B., and Platt, B.

Edwards v. *Wakefield*, 6 E. & B., 462, is a very strong case in favour of the analogy to bills of discovery; enough of the facts are disclosed in the judgment to make the meaning perfectly clear. The judgment was delivered by Lord Campbell, after a *cur. adv. vult.*, in the following terms:

"This was an application by the defendant to be allowed to deliver interrogatories to the plaintiff under the 51st section of the second Common Law Procedure Act. The action was in trover, by the assignees

of a bankrupt to recover property alleged to form part of the bankrupt's estate, and the proposed interrogatories were for the purpose of compelling the plaintiffs to state upon oath what act or acts of bankruptcy they intended to rely upon in support of the title of the assignees. We think that the application is not authorized by the enactment in question. From the provision limiting the power of delivering interrogatories to persons only who could give evidence, and from the subsequent sections referred to in the argument, where provision is made as to depositions, and statute 1 Will. IV. c. 22, as to evidence taken under commissions is referred to, we are disposed to think that the section now under our consideration is intended to apply to cases only where the matter inquired into would be evidence in the cause, and that it was not intended thereby to give one party the power of asking the other how he intends to shape his case. Such an inquiry is a mode of requiring particulars on oath without the party being obliged afterwards to confine himself to the particulars. When the justice of the case requires such particulars to be given, the court have generally the means of compelling them to be given, under such provisions as are reasonable. We think that we ought, at all events, to hold that the discovery under the 51st section is limited by the words 'upon any matter as to which discovery may be sought' to the cases where discovery would be given in equity, and we think that the proposed questions clearly fall within the rule, that a

party is not to make a fishing application as to the manner in which his adversary intends to shape his case and as to the evidence by which he intends to support it. It has been conceded by the learned gentleman who attended on this occasion from a court of equity, that in answer to such questions as the present in a discovery bill, the plaintiffs at law would be entitled to say, 'I shall support my case by any acts of bankruptcy which I can prove, and which I shall be advised to rely on.' The danger into which a defendant may be put by not knowing what acts of bankruptcy may be relied on has long been felt, and the Legislature has interfered to do away in some cases with the hardships of the relation to prior acts of bankruptcy, but we never hear of an application to a court of equity to compel the assignees to state upon oath what acts of bankruptcy they intend to rely upon. If that course could have been adopted, it would, we think, have been frequently resorted to. We were much pressed with the recent case of *Flitcroft* v. *Fletcher* in the Exchequer. (See ante, p. 11.) If the court there meant to decide that the defendant may always ask the plaintiff to declare on oath how he means to shape his case, we are not prepared to assent to it, and we should not feel ourselves bound by a decision of this nature to the same extent as where a decision can be reversed on error, even if the case were precisely in point. Considerable part of the discussion in that case must have been on the nature of the action of ejectment, and we entirely agree

with the first resolution of the court, that the action of ejectment is one in which interrogatories under the 51st section of the act may be administered. On the other point, the court relied in some measure on the nature of real actions, where it was said the pedigree must be specially stated, a ground which, were it well founded, would not apply to the present case. They seem also to have relied on a decision of a court of equity as to a disclosing a pedigree, and not to have considered the case as one really asking for the mode or manner of shaping the plaintiff's case and for the evidence in support of such case. One learned baron referred to the practice of granting particulars, which does not seem to us a good reason for the construction to be put upon the act. We are of opinion that it is not competent for a defendant to require the plaintiff to answer on oath how he intends to shape his case by interrogating him as to the acts of bankruptcy upon which he proposes to rely, and we think, therefore, that the present rule should be discharged."

Horton v. *Bott*, 26 L.J., 267 Ex.; 2 H. & N., 249, is a case of very great importance, and one which will be found very strongly to support the doctrine of analogy to a bill in equity; it came before the court on an application to set aside an order made by Coleridge, J., at chambers, requiring the defendant, in the action of ejectment, to answer interrogatories corresponding with those in *Flitcroft* v. *Fletcher* (post, p. 98). Time having been taken

for consideration, the judgment of the court was delivered by Bramwell, B., and as the judgment contains enough of the facts to explain the argument, we shall here confine ourselves to giving the judgment: "This is a rule to set aside an order of my brother Coleridge, requiring the defendant to answer interrogatories. The facts deposed to in the affidavit were, that the plaintiff was the heir-at-law of a person who died in the early part of this century, seized in fee of land, which went to his heir, and ultimately to a lady who married, and died after having had some children, when her husband took possession and occupied until his death, last year; that after his death the plaintiff brought this action of ejectment, and applied to a professional gentleman, who acted on behalf of the parties now in possession, to know what their title was, and was told that it was under a settlement executed by the lady before mentioned, and the interrogatories ordered to be inserted were relative to this alleged deed of settlement, and the title of the defendants under it. It was insisted on behalf of the defendant that there was no power to order such interrogatories. The authority is given by the 51st section of the Common Law Procedure Act, 1854, which enacts that interrogatories may be required to be answered upon any matter as to which discovery may be sought; *of course this must mean according to the rules existing in courts of equity;* and the question was, whether the discovery sought was within those rules? We may be permitted to say that (perhaps

owing to our want of familiarity with the subject) the remark of Lord Abinger seems well founded: 'Upon looking at the cases, some of them appear extremely embarrassed and contradictory, and no steady principle is adopted in them.' (*Bellwood* v. *Wetherell*, 1 You. & C., 211.) In Wigram on Discovery, the rule is thus stated: 'The right of a plaintiff in equity to the defendant's oath is limited to a discovery of such material facts as relate to the plaintiff's case, and does not extend to a discovery of the manner in which the defendant's case is to be established, or to the evidence which relates exclusively to his case.' Of course this would not include the discovery sought by the plaintiff; but in page 285 of the same book, the author says: 'Lord Redesdale, however, in speaking of the purposes for which discovery is given, says the plaintiff may require a discovery of the case on which the defendant relies, and of the manner in which he intends to support it.' The first of these propositions, that a plaintiff is entitled to a discovery of the case on which the defendant relies—that is, that the plaintiff is entitled to know what the case is—admits of no doubt. The common rules of pleading make it necessary that the defendant should so state his case that the plaintiff may know with certainty what case he has to meet: and in the strict observance of those rules a plaintiff is secure against surprise. It is at the peril of the defendant if his pleadings are defective in this respect, but this is quite independent of the law of discovery.' The general rule, therefore, as to discovery

seems qualified by the doctrine of Lord Redesdale, sanctioned by Sir J. Wigram. But there are other authorities. In *Bellwood* v. *Wetherell*, 1 You. & C., 211, Lord Abinger says: 'Now, the obvious line to be drawn is this: that though in general the defendant has no right to a discovery of the plaintiff's title, yet in certain cases he will be entitled to a discovery of the nature, though not of the evidence, of that title. Thus, where a party files a bill as rector, the defendant may file a cross bill to see whether the plaintiff in the original suit is entitled to have that which he admits may be due to somebody. The defendant may allege that some other person is entitled, and in such case he may file his bill of interpleader. If he does not go that length, he may suggest that he has had notice that some other person is entitled, paramount to the plaintiff, or that the plaintiff had parted with his right to the tithes; and in such case, though there is no ground whatever to make the party disclose the evidence of his title, still there is ground to call on the party to discover the nature of his title, so that the defendant shall not be harassed a second time. That would apply to several cases; as, for instance, if the defendant to an original suit had established a modus, and it then turned out that the plaintiff had parted with his interest, a person claiming by a paramount title might say that he was not bound by that decision. It is clear that in such case the defendant would have a claim to discovery of the nature of the plaintiff's title in order to protect him-

self in that particular payment.' So in 1 Ves. jun., 249, Lord Hardwicke says: 'The question comes to this, whether any person in possession of an estate, as tenant or otherwise, may not bring a bill to discover the title of a person bringing an ejectment against him, to have it set out, and seen whether the title be not in some other. I am of opinion he may, to enable him to make a defence in ejectment, considering him as a wrong-doer against everybody.' In *Glegg* v. *Leigh*, Madd., 193, discovery of even the title was refused. In *Lowndes* v. *Davis*, 4 Sim., 468, that and more was granted to a person in possession, defendant in a suit in equity, where he had filed a cross bill. This case, however, is denied by Sir J. Wigram (Discovery, p. 290). *Fliteroft* v. *Fletcher*, 25 L.J., 94 Ex., was also a case where the person in possession sought discovery of the title of the plaintiff suing him. *Selby* v. *Selby*, 4 Bro. C.C., 11, was determined on a point of pleading. *The Attorney-General* v. *the Corporation of London*, 18 L.J., 315 Chancery, was also decided on the particular relation between the plaintiff and the defendant. In the result we find no case in which a plaintiff, as in the present case, making a claim, thereby gives himself a right to call on a person in possession to state by what title he is so. On the contrary, the grounds of the decisions in the cases cited are inconsistent with such a right. The case of an heir-at-law claiming against a person deriving title by conveyance from one of the claimant's ancestors, must have been of constant and continued occurrence year

after year, and the circumstance of no case existing in which such discovery as that now sought for was obtained, is, to our minds, strong to show there is not a right to it. If such a right existed, it would, in an infinite number of cases, have been of the utmost importance to heirs-at-law to avail themselves of it. It is impossible not to see that such a right to discovery might have some most pernicious consequences. If it is to be established at all, it had better be in a court of equity familiar with these questions. As at present advised, we think it does not exist, and consequently make this rule absolute."

Adams v. *Lloyd* & another, 27 L.J., 499 Ex.; 3 H. & N. 351, is a case of very great importance, and one of the most instructive which has been decided under these sections. The case came before the court on a rule to show cause why an oral examination of the plaintiff should not be directed, or why the plaintiff should not, within a reasonable time to be named by the court, file a better answer to the interrogatories. The action was for trespass, for digging in certain coal mines. In their pleas the defendants claimed a right, under one Richard Parkes, of ingress and egress to work the mines. The questions were:

1. Have you in your possession power or control any deeds or writings relating to the lands mentioned in the first and second counts of the declaration delivered in this cause or any of them, or any part thereof? If so, state the number of such deeds and writings and the dates thereof, and the parties thereto.

2. Have you in your possession or control any other deeds or writings relating to the above-mentioned lands, or any of them, or any part thereof, other than the deeds and writings mentioned in your answer to the first interrogatory?

3. Had you, or had, to your knowledge or belief, any former owner of the said lands, or any of them, or any other person, at any time, in his or their possession or control, any deed or deeds, writing or writings, relating to such lands or any of them, which are not mentioned in your answers to the above interrogatories? or has any person now, to your knowledge or belief, the possession or control of any deed or deeds, writing or writings, relating to such lands or any of them, which are not mentioned in such answers? If Yea, state where, according to the best of your knowledge or belief, such deed or deeds now are, or what has become of the same, and whether or not such deed or deeds, or any such deeds, have been, to your knowledge or belief, lost or destroyed by time or accident or otherwise, and what are or were the dates of, and who are or were the parties to, any deed or deeds to which your answer to the interrogatory may refer?

Baron Martin declined to make any order. The application was renewed before Baron Bramwell, who made an order on the ground that the proper course was to allow the interrogatories to be exhibited, and that the plaintiff's time to object to the questions was when they were put to him and when they pinched him. The interrogatories were then exhibited, and

were answered by the plaintiff as follows: "I have in my possession, custody, and control, divers deeds and writings relating to the lands mentioned in the first and second counts of the declaration delivered in this cause, but I abstain from stating the number thereof, the dates thereof, and the parties thereto, being advised that I am not bound, and that the defendants have no right to call upon me to state the same, and being also advised that the first interrogatory itself is immaterial and irrelevant and merely fishing, and is otherwise objectionable in point of law; and I humbly submit that I am not bound to make any further answer thereto. I had not, nor, to my knowledge or belief, had any former owner of the lands, or any of them, or any other person at any time in his or their possession or control, any deed or deeds, writing or writings, relating to such lands or any of them, other than those which are now in my possession, power, or control as aforesaid; and no person has now, to my knowledge and belief, the possession or control of any deed or deeds, writing or writings, relating to such lands or any of them saving myself, who have such possession or control as aforesaid. I say that such deeds and writings so in my possession, power, custody and control, as aforesaid, are title-deeds, and evidences of my title to the lands, and that they do not, nor do any, nor does either of them, give to the defendants, or any of them, or show in them, or any of them, any title to the lands or any of them, or any part thereof, or furnish evidence of any

title or right of the defendants, or any or either of them, to the said lands or any part thereof, but the same relate exclusively to my own case in the action, and constitute my title to the lands and all the evidence thereof. I further say that my title to the lands was derived under persons who were purchasers of the lands for valuable consideration actually paid, and who had not, to the best of my belief, notice of the alleged or any title or right of the defendants, or any or either of them, or of any person or persons through whom they, or any of them, claim or allege to claim." After an elaborate argument the rule was discharged, the learned barons delivering their judgments seriatim. Pollock, C.B., Bramwell and Watson, B.B., deciding on the ground that, "The denial of the person interrogated that he had in his possession, custody, or control, any deeds or documents which would have a tendency to prove the case of the party calling for them was conclusive, and that he was the person to judge, whether or not the deeds or documents had such tendency." The judgments are too long to be inserted here, but they will be found to be very instructive. Baron Martin's judgment was based on the ground that the defendants never had a right to put the questions at all; and as his lordship founds his opinion on the rule laid down by courts of equity, and thoroughly adopts the views that the section has reference to bills in equity, his judgment will be given here. It is as follows: "I am of opinion that the rule ought to be discharged: and that opinion is

founded upon this; that I am fully satisfied the defendants have no right to put a single question they have put to the plaintiff that is contained in the interrogatories, and that those interrogatories ought to be disallowed. If they had been discussed in equity, I have no doubt that on a demurrer they would have been held to have been wholly inadmissible. I am certainly of opinion that, if the question was put which I think might have been put, the answer given to it in the answers of the plaintiff would have been evasive, and would not have answered it properly. But, really the question is not put; and the questions which are put are questions which, in my judgment, could not legally be put at all. Now the question in this case turns upon this: The defendants in answer to an action of trespass, insist that they are entitled to the minerals below certain land, the surface of which is admitted to belong to the plaintiff. That is the defence to an action of trespass brought by the plaintiff against them. They say, further, that their title is derived from a person named Parkes; and for the purpose of this case they sought to ask whether there are any documents in the possession of the plaintiff which would be evidence to show that they (the defendants) are entitled to these minerals. According to the authorities which have been cited to-day from Mr. Wigram's book, and from other books which have been mentioned by the learned counsel, it appears that they have a right to interrogate the plaintiff, whether, in the title-deeds which are in his possession, as belonging to him, there is any-

thing to afford evidence that these minerals belong to the defendants. As far as I can collect from Mr. Wigram's book, title-deeds stand on the same footing as other documents; and the question which I apprehend the defendants would have a right to put would be this: 'Is there anything in the title-deeds which you hold with regard to the surface of this land, which shows that the minerals do not belong to you but that they belong to us, the defendants?' I apprehend that the plaintiff would have been bound to answer that question directly, and that he would have been bound to give a plain and direct answer to it. But, if he does give a plain and direct answer to it, and says, 'I am in possession of title-deeds relating to this land, and I swear that there is not contained in those title-deeds anything which shows or which has a tendency to show that the defendant has a title to those minerals,' then, upon the authorities cited by the counsel for the plaintiff, and especially on the authority of *Reynell* v. *Sprye*, 1 De Gex, M. & G., 660, s.c., 21 L.J., 633 Chanc., where, although it appeared that the answers were false, yet Lord Justice Knight Bruce would not depart from the settled practice of equity, but acted on the answers as final, leaving the opposite party to seek such redress as he thought advisable—it seems to me to put an end to the matter. It appears to me that what the plaintiff has done in this case is, that he has rather evasively answered the question, supposing the question to have been put; but, in point of fact, he never is asked the question.

The three interrogatories are only general questions respecting 'deeds in your hands relating to the lands,' and the question which should have been put never is put, and, therefore it is impossible to say that the plaintiff has answered evasively a question which has never been put to him at all. I do not mean to say that there is not any other question that might have been put to him. 'Is the date of the conveyance from Parkes under which you claim, anterior to the date of the deed under which the defendants claim?' That is a question which, if it had been put, the plaintiff would have been bound to answer. At present I am not aware of any other question you could put besides those two, and upon the ground that in my judgment the questions which have been put by the defendants to the plaintiff are questions which could not legally be put, but which would have been subject to a demurrer, I think that this rule ought to be discharged. I own it appears to me that the proper course is to require parties to put their questions directly, so as to compel the other parties to answer them clearly and precisely; when that is done we know what we are about."

We now come to the case of *Bartlett* v. *Lewis*, 12 C.B. N.S., 249, 31 L.J., 230 C.P. After reading the decisions on the subject which have gone before it, this case, at first sight, certainly takes one rather by surprise, not so much on account of the point actually decided in it, as on account of the opinions expressed by Erle, C.J., and Willes, J., in the course

of their judgments. Further comment had, however, be better reserved until we have reviewed the whole of the authorities on the subject. The action was brought to recover the amount due upon twelve bills of exchange accepted by the defendant and endorsed to the plaintiff. The defendant pleaded a discharge under the Bankruptcy Act, and payment, upon which pleas issue was joined. The application was on the part of the plaintiff, and was accompanied by an affidavit of the plaintiff that the defendant had been insolvent in 1849; that in the month of January, 1853, he was adjudicated a bankrupt on his own petition, which bankruptcy was afterwards annulled; and that he was again adjudicated bankrupt in June of the same year, and in February, 1856, obtained a third-class certificate. The affidavit also stated particulars which went to show that shortly after his second bankruptcy the defendant was in possession of a very large sum of money. It was admitted on the application for the rule that the plaintiff intended to dispute the validity of the defendant's discharge under the 12 & 13 Vic. c. 106, s. 201, which renders the discharge void if the bankrupt shall have concealed any portion of his property. This is also felony under section 251. The interrogatories, the object of which was to show that the defendant had large sums of money in his possession shortly after his second bankruptcy, were as follows:

1. When, after your bankruptcy in 1855, did you

enter into or resume business? What was the business, and where did you carry it on?

2. Did you not immediately, or soon after, obtaining your certificate, and, if so, when, open or re-open an account at Messrs. Rogers's bank, Clement's-lane, Lombard-street, in the city of London? Did you not then lodge a considerable sum to your credit? Did you deposit any and what security? State the date of opening such account, and of the first deposit of money and security. State the amount of the first deposit. Were not other large sums of money or securities lodged to your credit in the said bank within the ensuing three months? State the entire amount of the deposits or lodgements so made.

3. Did you soon after obtaining your certificate open or re-open an account with the Unity Bank in London? State the date of opening or re-opening the same, the amount of money or securities then lodged to your credit, and also the gross amount of the deposits or lodgements made during the ensuing three months.

4. Have you not since your said bankruptcy opened accounts in other banks, and more particularly in Messrs. Gurney and Overend's, in the Bank of England, and in Messrs. Masterman & Co.'s bank? State the several banks in which you have so opened accounts, the times at which they were opened respectively, and the lodgements made to your credit on the opening of each.

5. Did you not, on resuming business after your bankruptcy, enter on large transactions requiring the command of considerable sums of money, and did you not, in point of fact, a short time before your bankruptcy, advance large sums of money in carrying on your business? State the amount advanced by you within six months after you obtained your certificate in the said bankruptcy.

6. What capital were you possessed of on so entering business after your bankruptcy?

7. Did you not soon after your bankruptcy advance a large sum of money on the bonds or other securities of the Rome and Frascati Railway? When was such advance made, and what was the amount? Was all or any portion of this advance your own money?

8. Did you not at or about the same time pay to the Swiss Bank a sum of £10,000, or some other sum, to guarantee the said railway securities or for some other purpose? What amount did you so pay, and where?

9. Did you not in the year 1858, or at some other time after your said bankruptcy, advance large sums of money to the Cork and Youghal Railway Company? What amount did you so advance, and when? Do you not hold a large amount of stock, shares, debentures, or other securities of the said company? Did you not, on or about the 30th of August, 1861, at a meeting of the said company, state that you were the principal owner of the stock of the said company?

10. Have you not recently bought from the Duke

of Devonshire an estate for the sum of £80,000, or any other and what sum? When did you buy the same, and what purchase-money has been paid? Was it not paid out of your own monies and on your own account?

11. Were you, within three months of obtaining your certificate, in possession of a sum of £10,000, or, if not, of any sum exceeding £1000? If not, are you now in possession of same, and at what period after the allowance of the said certificate were you first possessed of that amount?

12. Did you not before your bankruptcy employ one William Tingay to dispose of Westminster bonds on your account? State as nearly as you can the amount of bonds so disposed of by the said William Tingay? Was not the said William Tingay in the habit of offering the said bonds for sale by advertisement in the *Times* and other papers, and was not this done by your direction, or by your sanction and consent?

13. Had you not in the interval between June, 1852, and January, 1855, extensive dealings in bills of exchange with one George Hennet? State as nearly as you can the amount of acceptances of Hennet which passed through your hands?

14. Did you not receive from the said George Hennet acceptances to the extent of more than £40,000 for which you did not pay over to him any proceeds? Did you not pass away such bills and receive large sums of money on account of the same?

Was not a dividend afterwards paid on them in the bankruptcy of the said George Hennet?

15. Did not the assignees of the said George Hennet claim against you the sum of £53,000, or what other sum on account of such transactions? Did you not in the interim between your first and second bankruptcy compromise such claim for a sum of £1800, or what other sum?

16. State as nearly as you can the actual amount received by you on account of the said bills of George Hennet?

17. Was not William Tingay extensively employed by you in discounting bills and in disposing of securities?

18. Did not the same William Tingay, after your bankruptcy, hand you over several sums of money or securities for money? State fully the particulars of same.

19. Did he not especially hand over to you several acceptances of Messrs. Rowland and Evans? When were such acceptances given to you? What was the gross amount of same? How did you dispose of such acceptances, and for what value?

20. Were you at any time known by the name of David Levi, or by any, and what name different from that you bear now? If so, upon what occasion and for what purpose, and when did you assume the name of David Leopold Lewis? What name did your father bear?

21. Has either of your sisters since the date of your bankruptcy handed over to you any money, securities or property of any kind? If so, when and to what amount? State all the particulars connected with the same.

22. Have you since your resumption of business after your bankruptcy kept full and accurate books? Have you any book showing the amount of money employed by you in your business on its resumption? If so where is such book?

23. Can you state the dividend actually paid to your creditors under your bankruptcy?

24. Did you not soon, or at some time after your bankruptcy, pay to one C. Bailey a sum in which you were so indebted to him previous to such bankruptcy, or any other sum? When did you pay him? Give dates particularly.

25. Did not the said C. Bailey thereupon return to you the securities which he so held? What was the value of the securities so returned? How did you dispose of same, and when, and for what amount?

26. Did you soon, or at any time after your bankruptcy, pay to John Pickersgill, or Messrs. Pickersgill and Co., any and what sum of money on account of a debt due by you to him, or did you make any arrangements with him relative to such debt? Did he give up to you any securities held by or deposited with him? State fully all the particulars of such payment or arrangement, and the date of same. State also the

several securities handed over to you by him; the value of same, and how and when and for what amount you disposed of same.

27. Did you at any time say to one G. Burge, or to any one else, that your sister lent you a sum of £20,000, or any other sum? If so, was that statement true?

28. Had you, previous to your bankruptcy, any dealings with a German Jew named Krewiller, residing in Red Lion-square, Holborn, or elsewhere? Did you obtain from him any watches or other goods, and if so to what amount?

29. Did you use or employ any other name in carrying out this transaction? If so, under what name did you carry out the same? State fully all particulars connected with such transaction.

The ground of objection to these interrogatories was, that they tended directly to charge the defendant with a criminal offence, but this objection was overruled by the judges. As the case is of very great importance, at first sight appearing to alter materially the aspect of the whole law on the subject, the judgments will be here given in full. Erle, C.J., in the course of his judgment, said: "The interrogatories proposed to be delivered bear directly upon the matter in issue, and the 51st section decidedly authorizes the questions to be put. The spirit of the enactment is to enable the party interrogating to get at the truth, and to prevent a failure of justice from its undue concealment. These interrogatories bear upon what per-

haps may render the party interrogated liable to be proceeded against criminally, *but though some of them may be likely to lead up to it, none of them in terms asks the party if he has been guilty of an indictable offence.* Taking the interrogatories as they stand, I do not think they are rendered inadmissible by reason of any statement contained therein. It is clear, and indeed was almost conceded, that every one of the questions might be put to the party if he were in the witness-box; and if he then chooses to swear that his answers will render him liable to be criminally proceeded against, he may protect himself from that dilemma by declining to answer. But independently of that privilege, the interests of truth and justice must be allowed to prevail. I know of no principle of law which should protect a man who has been guilty of an indictable offence from being placed in this predicament, any more than one whose fraud and dishonesty just fall short of rendering him criminally responsible. I entirely differ from the proposition put forth by the counsel for the defendant, that the inference which a jury might naturally be expected to draw from the party's refusing to answer the interrogatories affords a reason why they should not be permitted to be put. It is the proper province of the law to bring all frauds to light; and I cannot think a man is more deserving of sympathy and protection because his iniquities come up to the indictable point. Nor do I infer from the language of the 51st section, that it was intended that the prac-

tice of the courts of equity was to regulate us. It provides that interrogatories may, by order of the court or a judge, be delivered as to any matter upon which discovery may be sought. I think the Legislature has cautiously abstained from limiting the power of administering interrogatories to cases where a bill for discovery will lie. The authorities, I think, fully warrant us in going the length I propose to go upon this occasion. *Osborne* v. *London Dock Company*, 10 Ex., 698, ante, p. 5, is precisely in point. The application there was opposed on the ground that if the plaintiff was a party to such fraudulent practices as those sought to be established by the answers to the interrogatories, he would be liable to be indicted, and that the right to interrogatories under this section was confined to cases where a discovery might have been obtained in a court of equity." But Parke, B., said: "The language of the 51st section is much more extensive in its signification, and has no such limitation as that contended for." The 50th section, which empowers the court to order the production of documents, says that it shall be done upon the affidavit of the party applying for the document, to the production of which he is entitled for the purpose of discovery or otherwise. And the 51st section says, that the party may be interrogated upon any matter upon which discovery may be sought. It does not say that the power is limited to cases in which a bill of discovery will lie. In *Tupling* v. *Ward*, 6 H. & N., 749, all that Martin, B., in delivering the judgment

of the court, says, is, "that without laying down any general rule on the subject they think that in cases of that kind it would be unjust to submit questions which the party clearly was not bound to answer, the object being either to compel him to answer when not bound, or to refuse, and so create a prejudice against him. What precise limitation the court meant to impose upon the rule laid down in *Osborne* v. *The London Dock Company*, I know not, but I think they did not intend to overrule it. *Osborne* v. *The London Dock Company* was acted upon by this court in *Chester* v. *Wortley*, 17 C.B., 410, and I am disposed to act upon it likewise. Upon the whole, I think the interrogatories in question may properly be delivered." Willes, J.: "I am of the same opinion. It is only necessary to look at the frame of the 51st section to see that it was intended that this new jurisdiction should be administered in the courts of law by analogy to their own proceedings, and not to the practice of the courts of equity. The framers of the act evidently did not intend that we should be fettered by the rules of equity; upon a careful consideration of its language, I think the 51st section will be found expressly to exclude the difficulties which it appears, from the treatise on the Law of Discovery by Sir James Wigram and Mr. Hare, so frequently arose in courts of equity, as to whether an objection of this nature should be made on demurrer or come by way of answer. The party interrogated is by the very terms of the section placed in the position of a witness. Now, if such questions as

these were put to a witness, the witness, in order to excuse himself from answering them, must make out to the satisfaction of the court that he would be in peril of a criminal prosecution if he was compelled to answer them. Upon this ground it appears to me, that even admitting that the interrogatories are put for the purpose of extracting answers which may criminate the party, or of prejudicing him in the estimation of the jury if he declines to answer them, they ought to be allowed to be put. I must own that I have no sympathy with a witness who is compelled, in order to protect himself from answering, to admit that his answer would tend to criminate him. This view of the law was acted upon by the Court of Exchequer, in the case of *Osborne* v. *The London Dock Company*, 10 Ex., 698; and again by this court in *Chester* v. *Wortley*, 17 C.B., 410. But it is said that these cases have been overruled by the recent case of *Tupling* v. *Ward*, 6 H. & N., 749. I apprehend, however, that this is not so. If that case proceeded upon the notions that the courts of equity will not allow discovery in the case of a libel, it is not well warranted. In Hare on Discovery, 116, it is said: 'It is no objection to a bill for discovery that the matter in question might have been the subject of an indictment or information.' An action for damages having been brought against the author of a libel, a bill was filed for the discovery of evidence in support of a plea of justification. It was objected that the bill admitted the authorship of the libel, that whether true or false

it was an indictable offence, and the plaintiff therefore, by his own showing, came to the court to protect himself against the consequences of his crime. But it was held that if the plaintiff at law thought fit to treat the conduct of the defendant as a civil injury only, it was but just that the same course of defence should be open to him which was open to other defendants in civil suits. It is no objection that the action proceeds *ex delicto*. No such limitation of the jurisdiction as to discovery is hinted at in any book of practice, or by the dictum of any judge. Courts of equity exercise a direct jurisdiction in matters of waste and public nuisance which are *ex delicto*. I am not, therefore, prepared to say that a court of equity will refuse its ordinary aid to the parties in any action at law proceeding for a civil remedy, per Sir John Leach, V.C., in *Thorpe* v. *Macaulay*, 5 Madd., 230. The same principle was affirmed by Lord Eldon in *Macaulay* v. *Shakel*, 1 Bligh, N.S., 96. The court could only consider it as an alleged libel, and whatever might be the character or nature of such an alleged libel, the court must assist a plea of justification. It was observed by Lord Eldon that in the Exchequer it was the practice with underwriters, when policies of insurance were found to be effected with gross frauds, to bring the assured into court and compel them to answer by pleading frauds which would have been indictable. I entirely agree with my lord, that we must proceed under this statute according to our own practice, and are not to be governed by that of

the courts of equity. All that *Tupling* v. *Ward* amounts to is this, that under the peculiar circumstances of the case, the court did not consider it one in which the interrogatories should be allowed. I think that is to be treated as an exceptional case." The other judges concurred.

In *Bayley* v. *Griffiths*, 31 L.J., 477 Ex., post, p. 45, Bramwell, B., said, during the arguments: "I very much doubt whether you cannot search a man's conscience as to his own case," which remark, by implication, would tend to show that the learned baron was disposed to doubt whether the wording of the section had reference to the proceeding by bill in equity.

Blyth v. *L'Estrange*, 3 F. & F., 154, was a summons at chambers before Blackburn, J., who, in his decision, said: "As the word discovery is used, I cannot disregard the decisions of courts of equity on this subject."

An attentive perusal of the authorities above quoted will, it is thought, at once indicate what course the courts will follow in deciding the proper meaning to be put on the words "any matter as to which discovery may be sought." It will be seen that in many of the cases it has been distinctly laid down that the case must be one which would be proper for discovery in equity; and although this proposition has been disputed on several occasions, and at first sight may seem to have been entirely disregarded in the case of *Bartlett* v. *Lewis*, ante, p. 25, it is submitted that a closer examination of that case,

and of what it really decided, will show that it does not contravene the principle contained in the proposition laid down in other cases, but only decides that in the exercise of the new jurisdiction under this section, the courts of common law will be guided by *their own practice*, and not by that of the courts of equity. *Bartlett* v. *Lewis*, and all the other cases in which the courts have refused to be guided by the rules of the courts of equity, were cases where the real question was, shall questions, the answers to which would have a tendency to criminate the party interrogated, be entirely disallowed, or shall it be left to the party interrogated to take the objection *on oath* when the questions are put to him, and when they pinch him? Now it appears that the practice of the courts of equity, in cases of this kind, is, that if it manifestly appears on the face of the bill that the tendency of the discovery sought would be to criminate the defendant, the bill would be held bad on demurrer; but if something had to be alleged by the defendant in order to show the vicious tendency of the questions, then the defendant must take the objection *on oath* by way of answer. On the other hand, in the common law courts, the question is always put, and the witness must then make out *on oath*, to the satisfaction of the judge, that if he were to answer the question he would be in danger of a criminal proceeding, so that the only difference would seem to be merely one of practice, and not of principle. In equity procedure, the objection *in extreme cases* does not require to be on

oath, whilst in the common law courts it must *always be so.* And in this one instance the judges have declined to be governed by the equity practice, and have almost always allowed the questions to be put, saying that the objection is premature. This, however, must not be taken as an absolute rule; for in the course of his judgment in *Bartlett* v. *Lewis*, Erle, C.J., said: "None of these interrogatories in terms asks the party if he has been guilty of an indictable offence," thereby implying that had they done so they would not have been allowed—see also *Tupling* v. *Ward*, 30 L.J., 222 Ex. If the view of this class of decisions is the correct one, then it follows that in no single case has the proposition been disputed, and that it must be considered law, that "the case must be one which would be a proper subject for discovery in equity." A perusal of the following part of this little book will show that all the rules laid down by the courts are directly taken from those in use in the equity courts, thus strengthening in a very great degree the proposition contended for.

CHAPTER II.

RULES WHICH HAVE BEEN LAID DOWN BY THE COURTS AS TO WHAT INTERROGATORIES MAY BE ADMINISTERED.

THE first proposition laid down by Sir J. Wigram, in his book on Discovery in equity, is, that "The pleadings in a cause and rules of practice, unconnected with the laws of discovery, determine *à priori* what question or questions in the cause shall first come on for trial. And the right of a plaintiff to discovery is in all cases confined to the question or questions in the cause, which, according to the pleadings and practice of the courts, is or are about to come on for trial."—*Wigram on Discovery*, p. 17, 2nd ed. This proposition has been adopted by the courts of common law under the form, that the interrogatories sought to be administered under the 51st section must be relevant to the matter in dispute, and the learning

contained in that chapter of the work above mentioned which discusses that proposition, will be found of great assistance in considering this branch of the subject. In the first case which was decided on the section, *Martin* v. *Heming*, 10 Exch., 478, 24 L.J., 3 Ex., Parke, B., said: "We must be satisfied of the relevancy of the interrogatories," and since then the rule has never been doubted. It will be found to have been acted upon in *Robson* v. *Cooke*, 2 H. & N., 766; *Adams* v. *Lloyd*, 3 H. & N., 351; and *Zychlinski* v. *Maltby*, 10 C.B., 839. The soundness of the rule is so apparent that it seems scarcely necessary to discuss it further.

The object of the enactment is clearly to enable the court to come to a correct decision on matters in dispute between the parties to the action, and "the right" (says Sir J. Wigram, p. 25) "is limited by the purpose with reference to which alone it is conferred, and will not extend beyond the exigencies of the question or questions about to be tried. To determine what such question or questions may be, the ordinary rules of practice (unconnected with the laws of discovery) must be separately consulted. If an issue or issues of fact be raised by the defence (as by plea), the point to which the attention of the pleader will then be directed must be—what question or questions in the cause will first come on for trial—for to such question or questions alone will the object of the court in compelling discovery apply."

Sir J. Wigram's second and third propositions will

also be found to have been adopted by the courts of common law as the foundation for the rules which they have laid down for regulating the interrogatories which may be administered under this act. These propositions are:

2. "*It is the right*, as a general rule, of a plaintiff in equity to exact from the defendant a discovery upon oath as to all matters of fact, which being well pleaded in the bill, are material to the plaintiff's case about to come on for trial, and which the defendant does not, by his form of pleading, admit."

3. "The right of a plaintiff in equity to the benefit of the defendant's oath is limited to a discovery of such material facts as relate to the '*plaintiff's case*,' and does not extend to a discovery of the manner in which the '*defendant's case*' *is to be exclusively established*, or to the evidence which relates exclusively to his case."—*Wigram on Discovery*, p. 15, 2nd ed.

In *Whateley* v. *Crawford*, 25 L.J., 163 Q.B., ante, p. 7, Lord Campbell lays down the rule that if the case falls within the statute the judges *are bound to grant the application*, thus adopting the first part of Sir J. Wigram's second proposition, which alleges that it is "*the right of a plaintiff*," &c.

By far the most important rule which can be laid down on this subject will be found in Lord Campbell's judgment in *Carew* v. *Davis*, 5 E. & B., 709, ante, p. 7, in the following words: "Whatever advances the plaintiff's case may be inquired into, though it may at the same time bring out matter which the defendant

relies upon for his defence; but you shall not inquire into what is exclusively matter of defence; that which is common to both the plaintiff and the defendant may be inquired into by either;" and Wightman, J., in his judgment in the same case, states the rule to be: "That the plaintiff is entitled to ask questions the answers to which will advance his own case, but not questions the effect or tendency of which would be to elicit answers relating exclusively to the case to be set up on the other side."

In *Moor* v. *Roberts*, 26 L.J., 246 C.P., Cockburn, C.J., in his judgment, says: "We shall find the object of the act to be this, that when either party to an action has a specific case which he desires to set up, but the materials for making it out are not in his possession, but in that of the other side, he should have a right to interrogate his adversary in order to establish his own case; but he is not entitled to find out how his opponent is going to shape his case, or to see whether there be any defects in it." The other judges concurred, and Williams, J., said: "The endeavour of the defendant is to discover what evidence is intended to be relied on upon the other side. If that were allowed, it would only increase the expense, and make the action more harassing."

This rule, as laid down in the judgments above quoted, will be found to be supported by the cases of *Thol* v. *Leaske*, 10 Exch., 704; *Horton* v. *Batt*, 2 H. & N., 351, 26 L.J., 267 Ex.; *Adams* v. *Lloyd*, 3 H. & N., 351, 27 L.J., 499 Ex.; *The London Gaslight*

Company v. *Chelsea Vestry*, 28 L.J., 275 C.P.; and *Bayley* v. *Griffiths*, 31 L.J., 477 Ex. In the last case it was decided that, "if the interrogatories relate to the case of the party interrogating, as well as to that of the party interrogated, they must be answered, although the answers may discover that latter's case." See also *Goodman* v. *Harvey*, 3 N.R., 512, where this doctrine is affirmed; but this proposition, it will at once be seen, is contained in the rule as laid down in the earlier cases. In *Bayley* v. *Griffiths* will be found the only instance in which any doubt has been thrown on the soundness of the rule now under consideration. Bramwell, B., during the argument, said: "I very much doubt whether you cannot search a man's conscience as to his own case." But as his lordship gave no reasons for this view, and as he has expressed himself on several occasions as holding the opposite opinion, it is submitted that the observation cannot be treated as of any weight when opposed to the large amount of authority which has been quoted. From what has been said it is at once evident that the rule which is now contended for is identical with the third proposition laid down in Wigram on Discovery, and that book having been much referred to in all the discussions which have arisen under this section, great respect, moreover, being due to the opinion of the learned author, it may not be thought amiss if some of the reasons which he gives for this proposition are noticed here. At p. 265, in speaking of the reasons for the rule, he says: "Experience has shown—or (at

least) courts of justice in this country act upon the principle—that the possible mischiefs of surprise at a trial are more than counterbalanced by the danger of perjury which must inevitably be incurred where either party is permitted, *before* a trial, to know the precise evidence against which he has to contend; and accordingly by the settled rules of courts of justice in the country (approved as well as acknowledged) each party in a cause has thrown upon him the onus of supporting his own case, and meeting that of his adversary, without knowing beforehand by what evidence the case of his adversary is to be established or his own opposed." And he then proceeds to notice a number of cases in support of his assertion and of his proposition. As our business is only with the decisions of the courts of common law, those on which he founds his opinions will not be reviewed here; but to any one desiring to thoroughly understand this subject, a careful study of the valuable work above cited, and of the authorities therein referred to, will be found most instructive.

The third rule which has been laid down on several occasions, and the soundness of which has never been questioned, is, "that fishing interrogatories shall not be allowed." The meaning of this rule is not at first sight quite clear, but a very slight examination of the authorities for it will show its meaning as well as its reasonableness. In *Moor* v. *Roberts*, 26 L.J., 247 C.P.; 2 C.B., 671, Cresswell, J., said that, "Interrogatories of a fishing kind, proposed for the purpose of

enabling the defendant to set up some defence," were inadmissible; from which it would seem that the meaning of the rule is, that the inquiry must be directed to some particular state of fact which is within the knowledge of the party to be interrogated, and must not be a mere attempt to find out by a variety of searching questions if there may by chance exist some circumstances of which the party making the application may take advantage to support his case. When the application is not made until after issue has been joined, the court or judge can see enough of the case to be able to decide whether or not the questions are tainted with this fault; but if the application is made on the part of the plaintiff before declaration, or by the defendant before plea, it must be supported by a special affidavit showing some ground for supposing that the answers to the interrogatories are likely to advance the case of the party making the application. In further explanation of this, see *Jones* v. *Hargreave*, 29 L.J., 368 Ex.; *Utter* v. *Willison*, 7 W.R., 265; *Stern* v. *Sevastopulo*, 2 N.R., 329; and *Hustler* v. *Freeland*, 2 N.R., 396.

The fourth rule which has been laid down for regulating interrogatories was first stated as follows: "It is no objection to interrogatories that the answers to them would tend to criminate the person interrogated, that objection must be taken by the person himself on oath when the interrogatories are put." This rule was laid down in these terms in *Osborne* v. *London Dock Company*, 24 L.J., 140 Ex.; 10 Exch., 698; it

was affirmed in *Chester* v. *Wortley*, 25 L.J., 117 C.P.; 17 C.B., 410, and remained undisputed until it came before the court in the case of *Tupling* v. *Ward*, 30 L.J., 222 Ex. Martin, B., in delivering the judgment of the court in that case, said: "This action was for a libel contained in a book called 'The Diary of an Ex-Detective,' and it was alleged that there was an imputation cast upon the plaintiff by the defendants, in saying that he had committed some grave offence. It was proposed to ask a number of questions with respect to who was the author of the work, and whether it had been printed in combination with him, and also whether or not the defendants were not guaranteed or indemnified, and a variety of other questions of that sort. We are all of opinion that in the exercise of the authority and discretion given to us by the Common Law Procedure Act, such questions ought not to be allowed. It was scarcely contended that the defendants were bound to answer the questions; but it was pressed on us that it should be put to them to refuse to answer. Without laying down a general rule on the subject, my brothers all thought, and I quite agree, that in cases of this kind it would not be fair to submit to the defendants questions which they are *clearly not bound to answer at all;* the object being to put them to answer the questions which they are not bound to answer or to refuse to answer, and so create a prejudice against them. We, therefore, think, without laying down any general rule on the subject, that in the exercise of that discretion which

the statute gives us, we should not permit these interrogatories to be asked." This question was again very fully discussed in *Bartlett* v. *Lewis*, 31 L.J., 230 C.P., which case will be found noticed, and the interrogatories, which were the subject of the argument, given in full in an earlier part of this work, ante, p. 26; that case was decided on the authority of *Osborne* v. *London Dock Company*, ante, p. 5; but in the course of his judgment, Erle, C.J., said: "No one of these questions directly charges the defendant with having committed an indictable offence," probably implying that had any one done so it would not have been allowed, and coupling this remark with the case of *Tupling* v. *Ward*, ante, p. 48, it would seem that the rule, as laid down in *Osborne* v. *London Dock Company*, must be somewhat modified by adding to it a condition that the questions shall not be such that the answers to them *must* tend to criminate the person interrogated.

We find, then, that all questions which can be legally put must conform to four general rules:

1. Interrogatories must be relevant to the matter in issue.

2. Interrogatories must be confined to matters which relate to the case of the party seeking to administer them, and must not extend to matters which relate exclusively to the case of the opposite party; but they may inquire into any matters which are common to the cases of both the contending parties.

3. Interrogatories must have reference to some state of circumstances which the party making the application has good ground for believing to exist, and must not be put for the purpose of fishing out information to enable the party to make out *some* case.

4. Interrogatories may be administered, the answers to which *may* have a tendency to criminate the person interrogated, and he must take the objection on oath when the interrogatories are put to him; but it would seem that if the tendency of the answers *must* be to criminate him, the interrogatories are not admissible.

In addition to these general rules, which we have deduced from all the decisions on the subject, various points have been from time to time decided in individual cases, which will be found useful to a complete understanding of the law by which this branch of practice is governed, and which must, consequently, be examined here.

1. In *Flitcroft* v. *Fletcher*, 25 L.J., 94 Ex., it was decided that interrogatories may be administered to the plaintiff in an action of ejectment, the object of which is to discover the character in which he claims, and the pedigree upon which he relies. *See post, Appendix, p.* 98, *where the interrogatories which were allowed will be found given in full.* The actual authority of this case, as far as it goes, has never been disputed, but the courts have carefully avoided carrying the doc-

trine contained in it further than it is carried by the decision itself; in *Horton* v. *Bott*, 2 H. & N., 249; 29 L.J., 267 Ex., it was decided that interrogatories corresponding with those in *Flitcroft* v. *Fletcher*, could not be administered to the defendant in an action of ejectment; and in *Stoate* v. *Rew*, 32 L.J., 160 C.P., the court refused to allow the *defendant* in an action of ejectment to administer such questions, on the ground that he was not entitled to do so without showing some special circumstances by which it would appear that the defendant was entirely ignorant on what title the plaintiff relied.

2. In *The Wolverhampton New Waterworks Company* v. *Hawksford*, 28 L.J., 198 C.P.; 5 C.B. N.S., 703, it was decided that interrogatories were admissible which asked for the contents of a lost written document, a condition being added to the order, that the answers should not be used unless the parties on whose behalf the application was made, laid a foundation at the trial for giving secondary evidence of the contents of the document by proving to the satisfaction of the judge that it was lost. See Appendix, p. 108, where the interrogatories which were allowed will be found in full.

3. In *Tetley* v. *Easton*, 18 C.B., 643; 25 L.J., 293 C.P., it was decided that it was not ground for refusing leave to administer interrogatories that the answers would expose third parties to actions. See

Appendix, post, p. 99, where the interrogatories which were allowed will be found.

4. In *Moor* v. *Roberts*, 26 L.J., 246 C.P.; 3 C.B. N.S., 671, Cresswell, J., said that interrogatories were not admissible the object of which was to contradict a written document.

CHAPTER III.

1. WHAT AFFIDAVITS ARE NECESSARY IN SUPPORT OF THE APPLICATION TO ADMINISTER INTERROGATORIES. —2. WHEN ORAL EXAMINATION OF THE PARTY INTERROGATED WILL BE ALLOWED.

THE 52nd section enacts that: "The application for such order shall be made upon an affidavit of the party proposing to interrogate, and his attorney or agent; or, in the case of a body corporate, of their attorney or agent; stating that the deponent or deponents believe or believes that the party proposing to interrogate, whether plaintiff or defendant, will derive material benefit in the cause from the discovery which he seeks, and that there is a good cause of action or defence upon the merits; and if the application be made on the part of the defendant, that the discovery is not sought for the purpose of delay; provided that, where it shall happen from unavoidable circumstances that the plaintiff or defendant cannot join in such

affidavit, the court or judge may, if they or he think fit, upon affidavits of such circumstances, by which the party is prevented from so joining therein, allow and order that the interrogatories may be delivered without such affidavit."

If the application be made on the part of the plaintiff to deliver interrogatories either with the declaration or after it, or by the defendant with the plea or after it, the ordinary affidavit in accordance with the terms of the section, will be sufficient. *James* v. *Barnes*, 25 L.J., 182 C.P.; 17. C.B., 596. For form of affidavit, see post, Appendix, pp. 65, 66.

In *May* v. *Hawkins*, 11 Exch., 210, it was argued that under the wording of the section, the plaintiff was not compelled to swear to the merits, but, as will be readily supposed, the court held that he was as much bound to do so as the defendant. When the application is made by the plaintiff before declaration or by the defendant before plea, a case of special urgency must be made out by the affidavits, disclosing enough of the applicant's case to enable the judge to decide whether the interrogatories are proper to be administered. *Martin* v. *Henning*, 10 Exch., 478, ante, p. 42; *Croomes* v. *Morrison*, 5 E. & B., 984; *James* v. *Barnes*, 17 C.B., 596.

In a recent case in the Common Pleas the court refused to allow the defendant in an action of ejectment to administer interrogatories to the plaintiff corresponding with those in *Flitcroft* v. *Fletcher*, post, p. 98, unless they were supported by a special affidavit

showing that the defendant was wholly ignorant on what title the plaintiff relied, *Stoate* v. *Rew*, 32 L.J., 160 C.P., so that for the future the common affidavit will not be considered sufficient when it is desired to administer interrogatories of that kind.

The 53rd section enacts that: "In case of omission without just cause, to answer sufficiently such written interrogatories, it shall be lawful for the court or a judge, at their or his discretion, to direct an oral examination of the interrogated party, as to such points as they or he may direct before a judge or master; and the court or judge may, by such rule or order, or any subsequent rule or order, command the attendance of such party or parties before the person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon and otherwise, as to such court or judge shall seem just." The application on behalf of the party who complains of the insufficiency of the answers must be made promptly, or the judges will decline to make the order for the oral examination of the party whose answers are complained of. *Chester* v. *Wortley*, 18 C.B., 239. From the same case it also appears that the answers must follow the questions categorically. The question, What constitutes "just cause" within the meaning of

this section? will be found discussed in the cases of *Turk* v. *Syne*, 27 L.J., 54 Ex.; *Bender* v. *Zimmerman*, 29 L.J., 244 Ex., in the latter of which cases the court said that, "considering that the answers were on the whole in substance sufficient, construed in the plain sense in which a jury would be sure to construe them against the party interrogated, and considering there was no reason to believe (but the contrary) that the omission was intentional or designed to mislead or embarrass, and that any verbal amendments necessary might have been more properly made on a summons at chambers, they were of opinion that the order should not be made." Coupling the above remarks with those made by the court in *Swift* v. *Nun*, 26 L.J., 365 Ex., it would seem that the judges are disposed to use considerable caution in the exercise of this branch of their jurisdiction. See further, as to what will be considered just cause, *Geary* v. *Buxton*, 29 L.J., 280 Ex. It seems the application should be made first at chambers. *Bender* v. *Zimmerman*, *ubi suprà*; *Meadows* v. *Kirkman*, 36 L.J., 251 C.P. When a party has admitted by his answers that he has certain documents in his possession, he is not bound to set them out under the 51st section, but the opposite party must make an application under section 50 for this discovery. *Scott* v. *Zygomelas*, 24 L.J., 129 Q.B. By far the most important questions to be considered under this section are what answers will be considered sufficient to questions which have a criminatory tendency; and what to questions which affect the title to

real property of the person interrogated. The whole subject is so elaborately discussed and explained in the judgment of Pollock, C.B., in *Adams* v. *Lloyd*, 3 H. & N., 351; 27 L.J., 499 Ex., that it has been thought advisable to quote largely from it here. "I certainly," said his lordship, "have always considered the interpretation of the law upon the subject by the late Mr. Justice Maule to be the correct one: that you cannot ask either of an accused party himself, or of a person not already accused, but who may become the subject of criminal charge, any question that has a tendency to show his guilt. This is considered so sacred a principle, that the right of any civil plaintiff or defendant gives way to the exigency or sacredness of this rule, and however important the testimony may be, however it might decide the right to an estate, or to a large property, all persons are agreed upon this: that if the witness can satisfy the judge that the answer may have a tendency to criminate him, he is not bound to answer it, however large and deep an interest a suitor in a civil case may have in the answer to the question. Doubts certainly have arisen as to the extent to which the doctrine may be carried, and whether there are to be any limits set to the protection to be given to a witness. The only exception that I would make would be this: that if the circumstances disclosed to the court made the judge perfectly certain that the witness was trifling with the authority of the court, and availed himself of a rule of law with a

view to keep back the truth, having no ground whatever for the excuse he was making for not answering, then it would be the duty of the judge to insist on his answering the question. But I think it would be very inconvenient to lay down anything like a limit to that rule, by going to the extent of saying that the party questioned is bound to go so far as to satisfy anybody that he could not go further without tending to disclose his guilt, because the whole mischief might be done. It is impossible for anybody but the man himself to know what is the danger of his answering a particular question; and it may be that his disclosing that danger may put him in the very peril which it was the object of the rule of law to prevent. It appears to me, therefore, that the law on this subject is as it was pronounced by Mr. Justice Maule; and although in one or two cases some doubt may have been expressed on the subject, I cannot learn that there is any contrary decision. Really, one has, I think, but to put the question in any shape in which it can be propounded, to see that it is impossible to make any human being the judge of the answer that should be given to the question but the man himself. It is impossible that he can have to satisfy any one but the judge. But if he is to satisfy the judge, it may well be that he cannot satisfy the judge without at the same time satisfying everybody else in court, and exposing the whole matter; but it does not follow that the man must be guilty. A man may be placed in such circumstances in respect of the com-

mission of a crime, that if he were to disclose a certain fact connected with it, he would be instantly fixed on as the guilty person, by a train of circumstances to which he could give no answer. This rule of law is not always the protection of guilt, it may be the protection of perfect innocence. Although I think it very likely that the rule was originally introduced from very humane considerations that belong to our law, and which are embodied in the maxim, *Nemo tenetur seipsum accusare*, cases may arise in which it may serve, not as a shield, but as an honest protection to innocence." His lordship then, after stating that he thought these rules might be applied with advantage to the question what interrogatories may be administered with the object of finding out the contents of a man's title-deeds, continues: "The distinction between title-deeds and all other deeds appears to me to be, in a great measure, founded upon the doctrine which makes every Englishman's house his castle—upon the sort of value which attaches to property in land—to the distinctions which the law at all times makes between what is called real property and personal property. The distinction, in part, may have arisen from this: that, in the case of land, a man is considered as holding as tenant under the crown—he is considered as holding under a grant from the crown; almost every other species of property he holds, either directly or indirectly, by means of some contract. Now, it is admitted on all hands, and it is almost within my

recollection, that it was thoroughly and finally established, that a man shall not refuse to answer a question because his doing so may subject him to a civil suit. As far as liability to a contract, or to make recompense for a wrong is concerned, you have no right to say, 'I will not answer that question, because if I do I shall let out that I am liable to an action.' The doctrine of not accusing yourself, or not rendering yourself liable to a suit or prosecution, applies exclusively to crime, and not at all to a civil action. There was a considerable difference of opinion upon the subject, but at last the law was finally settled, and the broad distinction established between civil suits and criminal proceedings. Well, then, to apply these remarks to the question, whether a man is bound to produce a title-deed—for it must be a title-deed. I cannot imagine that it was ever intended by these later acts to introduce a new rule, by which a title-deed should be treated as being of no more value than a bill of exchange, or should be considered to be of no more importance. I do not think that that was at all intended. I think that a man's title-deed is still his own property, to be used for his own benefit, unless it proves the case of the opposite party; and if it does not prove the case of the opposite party, it is, for the purpose of the inquiry, irrelevant. It may be very important to the suit, and very relevant to the matter; but it is irrelevant unless it has a tendency to prove the case of the party who calls for it. If it has, he may call for it,

and, I should presume, have so much (and, I should have thought, not more than so much) as has such tendency extracted. Well, then, does the recent change in the law of evidence, by which, no doubt, the mode of ascertaining the truth has been very much enlarged, and by which justice has been done more largely than formerly, give any power such as that which is here sought? I think substantially it comes to this: 'Have you any documents that I have a right to see? If you have, state what they are, and let me know who are the parties, and so on, and then I will call for them, and ask to see them more distinctly and more at length.' If the party who holds them can say distinctly, 'I have no such documents; I will not tell you all the documents I have; it would be injurious to me; you have no right to know the penury of my iron chest; you have no right to know how little parchment I have to sustain my right to the position I hold; and you have no right to know what other documents that do not belong to me I have got into my possession, unless they belong to you; but I swear that I have no document which has any tendency, either directly or indirectly, to advance your case.' If a man states that, I think you cannot inquire any further about it, or say, 'What documents have you? who are the parties?' or to inquire anything about them that naturally accords with the right of search in other cases. Suppose you want to see a man's books; he has been your partner, and is in possession of the partnership books. They were

large, bulky volumes, with a great deal of blank paper in them, and he has used them for purposes of his own, in a totally different business, with which you had nothing to do. In such a case as that, you have a right, no doubt, to call for your own books; but he has a right to seal up those parts of the books which do not concern you, or to show the books to you in such a manner as that you cannot get at those pages with which you have nothing to do, and in which you have no interest. Who is to settle that? It is always settled by the oath of the party. He produces on oath the books, and is then allowed to fasten them up, so that you cannot see all those parts of the books which he swears have entries in them relating to matters in which you have no interest, and as to which you have no right to inquire."

The 54th section enacts that: "Such rule or order shall have the same force and effect, and may be proceeded upon in like manner, as an order made under the said hereinbefore mentioned act passed in the first year of the reign of his late Majesty King William the Fourth." See 1 Will. IV. c. 22, ss. 4 & 5.

By the 51st section, ante, p. 2, any party who, without a just cause, omits sufficiently to answer interrogatories, is deemed to have committed a contempt of court, and is liable to be proceeded against accordingly, and the object of this section is merely to make the process more rapid and easy. It seems that the courts will exercise a considerable amount of

caution in granting rules for attachment. In *Von Hoff* v. *Hoerster*, 27 L.J., 299 Ex., the rule was refused when the party against whom the attachment was sought, was a foreigner and resident abroad; and Pollock, C.B., said: "That the words must be construed reasonably, and did not apply where the party had not been guilty of neglect."

In *Curran* v. *Elphinstone*, 4 W.R., the court refused the rule when the party interrogated had not answered the interrogatories within the time allowed, but had done so before the application for the rule.

APPENDIX.

Common affidavit in support of application on the part of the plaintiff to administer interrogatories to the defendant, with the declaration or after it.

In the Q.B., C.P., or Ex.

Between A. B., plaintiff, and C. D., defendant. We, A. B., of , the above-named plaintiff, and E. F., of , attorney (or agent) in this cause of the said plaintiff, severally make oath and say as follows:

1. This action is brought to recover £ (*State briefly the nature of the cause of action.*)

2. We believe that the plaintiff will receive material benefit in this action from the discovery which he seeks by the interrogatories desired to be administered herein.

3. We believe that the plaintiff has a good cause of action on the merits sworn, &c.

Common affidavit in support of application on the part of the defendant to administer interrogatories to the plaintiff with the plea, or after it.

Commence as in the preceding form.

1. We believe that the defendant will derive material benefit in this action from the discovery which he seeks by the interrogatories desired to be administered herein.

2. We believe that there is good defence to this action on the merits.

3. The discovery sought by the said interrogatories is not sought for the purpose of delay.

Commencement and conclusion of interrogatories to be answered by plaintiff, or defendant.

In the Q.B., C.P., or Exch. of Pleas.

Between A. B., plaintiff, and C. D., defendant.

Interrogatories to be answered by the plaintiff (or defendant) by affidavit in writing, to be sworn and filed in the ordinary way, pursuant to the order of the Honourable Mr. Justice (or Baron) , made herein, dated .

(*Here follow the interrogatories, each being in a separate paragraph, and numbered.*)

(*Conclude with the following notice:*) The plaintiff (or defendant) is within ten days to answer the above interrogatories by affidavit in writing, to be sworn

and filed in the ordinary way, pursuant to the statute in that behalf.

Dated,

Yours, &c.
E. F. plaintiff's (or defendant's) attorney (or agent).

To the above-named plaintiff (or defendant), and Mr. , his attorney (or agent).

Interrogatories to plaintiff in an action by indorsee against acceptor of a bill of exchange.

1. When did you first become the indorsee of the bill of exchange declared on in this action?

2. Was A. B. the holder of the said bill at the time when it was indorsed to you, and did you take it from him? If not, who was the holder from whom you took the said bill?

3. What, if any, was the value or consideration for which the said bill was indorsed to you; and what were the circumstances under which, and the reason why, it was indorsed to you?

4. What, if any, was the value or consideration for which you held the said bill at the commencement of this suit?

5. Before, or at the time when the said bill was indorsed to you, did you know, or had you notice of, or had you any, and what reason to suppose or believe any, and which of the following matters, that is

to say: 1. That the defendant accepted the said bill for A. B.'s accommodation. 2. That there was no consideration or value for the said acceptance. 3. That A. B. never was a holder of the said bill for value. 4. That the defendant had revoked A. B.'s authority to negotiate the said bill. 5. That A. B. had been requested to return the said bill to the defendant. 6. That A. B. negotiated the said bill without the defendant's authority or consent. 7. That A. B. had promised the defendant that he would return the said bill to the defendant.

6. Did you commence, and do you prosecute this suit for your own sole benefit, or for the benefit, in whole or in part, of any other person, and whom? and if you answer that in any respect you sue for the benefit of any other person than yourself, what is the interest which such person has in the said bill or in this action?

7. Did you commence this action at your own cost and risk, or in whole, or in part, at the cost and risk of some other, and what person? and if you answer that you did so in any respect at the cost and risk of any other person than yourself, how, and why, is it that such person is to bear or participate in such cost or risk?

8. Have you ever been, and are you now, indemnified by any, and what person, against the cost of this action, or any part thereof? If yea, why did he so indemnify you?

(*If you took the bill, not from A. B., but from some*

other holder, then, and not otherwise, answer the following interrogatories.)

9. When did such other holder become the holder of the said bill, and from whom did he take the same?

10. What, if any, was the value or consideration for which the said bill was indorsed to such holder; and what were the circumstances under which, and the reason why, it was indorsed to him?

11. What, if any, was the value or consideration for which he held the said bill at the time when he transferred it to you?

12. Before, and at the time when it was indorsed to you, did you know, or had you any and what reason to suppose, or believe, that such other holder before, or at the time when he became the holder of the said bill, knew or had notice of any, and which, of the matters above specified in the fifth interrogatory?

Interrogatories to plaintiff in an action by indorsee on a bill of exchange, where it has been pleaded that the acceptance was obtained by fraud, and the bill indorsed to the plaintiff when overdue, and without consideration, he having notice of the fraud.

1. Are you the holder of the bill of exchange mentioned in the declaration?

2. Were you the holder of it, and was it in your possession at the time of the issuing of the writ herein?

3. On, or about, what day did you first become holder of the said bill? Did you become such holder before it became due?

4. From whom did you get the said bill?

5. Did you get it from A. B., the drawer?

6. Did he indorse it to you?

7. When did he indorse it? Was it before or after the said bill became due?

8. Was there any, and what, consideration or value for the indorsement of the said bill to you by the said A. B.? State fully and particularly what the consideration or value was, and the whole of it, and when it was given or made, and the parties to it, and the names and addresses of all the said parties, and how it was given or made, whether in cash or how otherwise, and the names and addresses of all the parties present when it was given, or when it was agreed to be given, or made, to the best of your knowledge, remembrance, information, and belief.

9. Under what circumstances did you become the indorsee and holder of the said bill? State fully and particularly those circumstances.

10. Did you know the circumstances under which the defendant parted with the said bill?

Interrogatories to defendant in an action on a bill of exchange; plea, the general issue; and the defence set up that the acceptance is forged.

1. Do you not know that about the early part of the year 18 , P. P. was in the habit of purchasing

goods of the plaintiff in this action, for the purposes of his trade?

2. Do you not know that shortly before the month of July, 18 , the said P. P. had fallen behind in his payments for certain goods sold to him by the plaintiff, and that about that time the plaintiff refused to supply him with any more goods?

3. Did not the said P. P. about the month of July, 18 , apply to you to become security for him for the payment of the price of such goods?

4. Did you not about the time in the third interrogatory mentioned, consent to the said P. P.'s drawing bills upon you to be indorsed by the said P. P. to the plaintiff as a security for the price of goods to be delivered by the plaintiff to the said P. P.?

5. Have you at any time since the month of July, 18 , accepted bills drawn on you by the said P. P.? If yea, what number of bills have been so accepted by you, and when were they so accepted?

6. Have you ever authorized any person to accept in your name bills drawn upon you by the said P. P.?

7. Did you not, either by yourself or by your agent, accept the bill mentioned in the first count of the declaration for £ , and dated the day of , 18 , drawn upon you by the said P. P.?

8. Have you not from time to time since the month of July, 18 , received notice from the plaintiff of the dishonour of certain bills drawn by the said P. P. upon you and accepted by you?

9. Did you not in the beginning of the month of

March, 18 , receive notice from the plaintiff of the dishonour of the bill mentioned in the declaration? Did you not on the day of March, 18 , or some other, and what day, in answer to a letter received by you from the plaintiff containing notice of dishonour of the bill in the said first count mentioned, write and send to the plaintiff a letter of which the following is a copy?

March , 18 .

Sir,

In answer to your letter received yesterday, I beg to state that I am very sorry to find that the bill has been dishonoured. I am aware that my friend, P. P., is rather hard up for cash at present, as he cannot get his money from his customers, being next week their rent-day. I sincerely hope you will wait for a month for the balance due. Will you be so kind as to send tea as usual to P. P., and I will sign another bill for the same.

Yours, &c.

To Mr. . J. O.

10. Did you not, on the day of March, 18 , or some other, and what day, write and send to the plaintiff a letter, of which the following is a copy?

March, , 18 .

Sir,

If the tea is sent as usual, you may depend that the bill will be cashed when due. P. P. desires me to ask

you to send him good tea; the balance will be settled, that is, if you will be kind enough to wait for a month hence.

Yours, &c.

To Mr. . J. O.

11. Was there, or is there, or were there, or are there, any document or documents relating to the acceptance by you of any bills drawn on you by the said P. P. since the month of July, 18 , and if yea, state what such document, or documents, is, or are, and whether it, or they, are in your power, custody, or control; and if you ever had the possession of the same, when did you have it, and to whom, if at all, did you part with such possession, and when?

12. Have you had any communications with the said P. P. since the commencement of this action, and what were they?

Interrogatories to plaintiff in an action on promissory note:

1. Is it, or is it not, a fact that before the indorsement to you of the notes declared on, or one and which of them, you knew, or had been informed, that the said notes or one of them, had been paid or satisfied in whole, or in part; and if in part only, how much according to such your knowledge or information, has been paid, or satisfied?

2. Is it, or is it not, the fact that there was no consideration or value for the indorsement of the said

notes to you respectively in whole, or in part only, and if in part only, for how much was there no consideration?

3. When were the said notes respectively indorsed to you?

4. Is it, or is it not, the fact that before the indorsement to you of the said notes, or of one, and of which of them, you knew, or had been informed, that the defendants, C. and F., were only sureties on the notes, or on one, and on which of them, for the defendant S., and that the payees of the notes were trustees for a money-club, and that the club or the said payees had given time to S. for payment of the money secured by the notes, or of some, and what part thereof?

5. Is it, or is it not, the fact that you sue for the benefit of the payees of the notes, or for that of a money-club?

6. Is it, or is it not, the fact that the notes were indorsed to you, because it was supposed that you would have a better chance of recovering, or would have a chance of recovering more in the action, than the payees of the notes would have had if they had sued?

7. Is it, or is it not, the fact that before the indorsement to you of the said notes, or of one, and of which of them, you knew, or had been informed that there was some objection to suing in the names of the said payees, and what was that objection which you so knew, or were informed of?

Interrogatories to defendant to discover whether he entered into contract (on which the action was brought) as principal or agent. (*Taken from Thol* v. *Leaske*, 24 *L.J.*, 143 *Ex.*)

1. Did you enter into the contract in the declaration mentioned, as agent, or as principal?

2. If you entered into the said contract as agent, for whom, and by what authority, did you enter into it?

3. Are there any entries in your books which show who was the principal for whom you acted in entering into the said contract, or is there any entry in your contract-book to that effect?

4. Has any money paid to you in respect of the contract in the declaration mentioned been paid over to such principal? If yea, when, and how?

5. Have you any entry, or entries, in your pass-book, or other book, or books, which show such pay ments?

Interrogatories to plaintiff in an action on a guarantee.

1. At the date of the guarantee sued on in this action was not C. R., who is named in the said guarantee, indebted to you in £ , or some other, and what, sum of money, and was any, and what part of the debt secured, and how?

2. Had you not, before the date of the said guarantee, required the said C. R. to make cash pay-

ments for goods sold by you to him, and particularly in the months of , 18 ?

3. Had not the said C. R., in fact, paid you in cash, less a discount of 25 per cent., for the goods which you supplied to him in the months of , 18 , before the date of the said guarantee, and for some, and which of such goods, or for the amount due for such goods within a pound or two; were not such payments, or some, and which of them, made because you required the said C. R. to make them, or because you declined to give him credit for the said goods, or some of them?

4. Did you ever inform the defendant, before the said guarantee was given, of any, and of which, of the facts mentioned in your answers to the above interrogatories?

5. Did you not, after the said guarantee was given, sell and deliver goods to the said C. R. on credit, and if so, on what credit, and for what terms as to time and mode of payment? Were not the goods in respect of which this action is brought, sold to him on some, and on what, terms as to credit?

6. Did you not, on or about the day of , 18 , take some, and what, bill of exchange from the said C. R. for £ , and was not that amount due from him on account of goods which he had had of you in the previous months of , and at what dates in those months?

Interrogatories to plaintiff in action against merchants for commission on sales of goods alleged to have been effected by the plaintiff for the defendants, to show that the plaintiff was not employed by the defendants in the matter, but that if he acted at all, he did so as the agent of the purchaser. (*This example is taken from Rew* v. *Hutchins*, 10 *C.B., and is of great authority, as the interrogatories were allowed by the full court.*)

1. Are you a merchant carrying on business in London?

2. Have you occasionally, for several years past, and as far back as 1852, or for what time, acted as mercantile agent in London for the firm of Girona Brothers, merchants, of Barcelona?

3. In or about August, 1858, had you communications with Mr. Scudamore, the secretary of the Rhymney Iron Company, upon the subject of some iron rails required by Messrs. Girona Brothers, of Barcelona? And had you a discussion, or conversation with him respecting the price paid by the company?

4. Did you, in the course of the said communication, state to the said Mr. Scudamore, or give him to understand, that you got two per cent. commission from Girona Brothers, which would be an addition to the price to be paid by Girona Brothers?

5. Did you, on or about the 30th of August, 1858, on behalf of Girona Brothers, of Barcelona, effect a

contract with the Rhymney Iron Company for the sale of iron rails and other articles?

6. Were iron rails, tie bars, saddles, and rivets, from time to time, and at many different times, shipped and forwarded under this contract from Newport and Cardiff to Girona Brothers, at Barcelona?

7. Were there not in the whole about 12,500 tons of iron at different times shipped in performance of the said contract? And did not such performance of the said contract extend over nearly twelve months?

8. In the course of the performance of the said contract had you occasion at different times to communicate with the Rhymney Iron Company respecting their performance of the said contract? And did you not in such communications act for and on behalf of the said Messrs. Girona Brothers?

9. Did you, in the course of November, 1859, have an interview with Mr. Scudamore, the secretary of the Rhymney Iron Company? And had you then a conversation with him respecting the contract for sale of the 20,000 tons of iron by the company to Girona Brothers, mentioned in the particulars of demand in this action?

10. Did you, upon that or any other occasion, mention to Mr. Scudamore that you had heard that the Rhymney Iron Company had sold 20,000 tons of iron to Girona Brothers direct, and that you could hardly believe it, or words to that effect?

11. Did you also say to Mr. Scudamore that of

course the company had protected you in the way of commission, or words to that effect? And did he not answer that they had not done so, or to that effect?

12. Previously to the above-mentioned interview had you any communication with the Rhymney Iron Company (or with any one on their behalf) on the subject of the sale by them of the said iron, or contract for 20,000 tons of iron, mentioned in the particulars of demand?

13. Beyond the 12,500 tons of iron supplied by the Rhymney Iron Company to Messrs. Girona Brothers, under the contract of the 30th of August, 1858, as before inquired after, had you, after the date of the last-mentioned contract, and before the date of the contract for 20,000 tons, mentioned in the particulars of demand, any communications with the Rhymney Iron Company respecting the supply by the company to Messrs. Girona Brothers of any further iron?

14. Had you any personal communications with Messrs. Girona Brothers upon the subject of the contract for the purchase by them of the 20,000 tons of iron from the Rhymney Iron Company, mentioned in the particulars of demand (relating to your remuneration or commission upon that sale)? And, if so, state when, and to what effect.

15. Had you another interview with Mr. Scudamore on a subsequent occasion to that above referred to in interrogatory nine, upon the subject of the said sale of 20,000 tons of iron? And did you then say

that you felt quite sure that the company must have provided for you? And did you then produce an account of your claim for commission, and did Mr. Scudamore then say that you must know you had no claim against the company, that Messrs. Girona had come direct to the company, and that they had done so in order to save the commission which they would have to pay? And did he advise you to withdraw that account or claim, or to the above effect?

16. Did you, upon the occasion last mentioned, take your said account back with you? And did you afterwards address a letter on the subject to the said company, dated the 29th of November, 1859?

17. Has any correspondence or communication passed between you and Messrs. Girona Brothers, of Barcelona, or with any one on their behalf, either by letter or telegrams, upon the subject of your giving orders, or effecting contracts for them for the purchase of iron, and as to the mode of remuneration to you for such services (which would be applicable to the relation in which you stood to them in the years 1858 and 1859 upon the above subjects)? And if so, state the respective dates of the same, and by, and to whom, and to, or from, what places, the same were sent, sufficiently to identify them.

18. Was there at any time any written contract between you and the said Messrs. Girona upon the subject of the last interrogatory, and extending to the same period? If so, state when, and who the parties to the same were, and where the same now is.

19. Have you since the date of the contract for 20,000 tons of iron, mentioned in the particulars of demand, given the Rhymney Iron Company an order for a large quantity of iron for the said Messrs. Girona Brothers? And was not the said order accepted and executed? And were you not remunerated exclusively by Messrs. Girona Brothers for your services in the transaction? And is it not true that nothing was ever said by you to, nor any claim made upon, the Rhymney Iron Company for commission, or other remuneration? Was it not agreed, or understood, between you and Messrs. Girona Brothers, that you were to receive no commission, or remuneration from the parties with whom you dealt on their account, and that you were to look to them, Messrs. Girona Brothers, for your remuneration or commission?

Interrogatories to defendant in an action against an agent for not accounting to his employer for goods sold on his account.

1. Did you not, on or about the month of , 18 , or at some other, and what time, receive from the plaintiff, or on his account, a cargo of , by the ship , or otherwise, and how was the same invoiced to you by the plaintiff?

2. Did you not receive the said goods in the first interrogatory above mentioned for the purpose of sale on the plaintiff's account, or for some other, and what, purpose?

3. Have you sold any, and what part, or parts of the said goods? If yea, on what day, or days, did you sell the same, and for what sum, or sums, and what are the names, and addresses of the person, or persons to whom you sold the same?

4. Have you received from those persons, or from either, or any, and which of them, any, and what, sums as, or on account of, the price, or prices, of the said goods? If yea, when did you receive the same?

5. If you have not sold the whole of the said goods, have you otherwise, and when, and how, disposed of any portion of the residue which you have not sold?

6. Have you any, and what, portion of the said goods now in your possession, or control, unsold or otherwise? If yea, where is it?

Interrogatories to plaintiff in an action against a partner who has retired from a firm, for the price of goods supplied to the firm, to discover whether the goods were supplied on his credit.

1. Were not the goods, the subject-matter of this action, ordered and bought of you by, and were they not invoiced to the firm of , carrying on business at , or to some other and what firm?

2. Did you, at or before the dates of the orders for and purchases of the goods, or any of them, know who were the persons who composed the firm to whom you sold the said goods? Did you not know that the defendant was not a member of it? Did you then believe him to be a member of it, or had you not

reason to believe that he was not then a member of it?

3. Did you at the time when you accepted the orders for supplying the goods in question, or any of them, really give any credit whatever to the defendant, or to the firm to whom you sold the said goods, on the supposition, and belief, that the defendant was a member of such firm?

4. Did you at any, and at what time, before the orders for, and supplies of, the goods in question, make any, and what, inquiries of any, and of what, person or persons, as to the connexion of the defendant with the firm to whom you sold the said goods? If yea, state the result of such inquiries.

Interrogatories to officer of a railway company in an action against the company for the loss of a passenger's luggage, to discover whether the company worked the line on which the loss occurred, either alone or jointly with some other company.

1. Do the defendants carry, and did they not, on the day of , 18 , carry for hire, passengers and their luggage by railway, from to ?

2. Do they, and did they then, do so, alone, or in conjunction with any other, and with what, company, or persons?

3. Have the defendants, and had they on the day of , 18 , a railway station at ,

alone, or in conjunction with any other, and with what, company, or persons?

4. Were the defendants on, and prior to the day of , 18 , in the habit of issuing tickets at the station in the second interrogatory mentioned, to persons applying for the same, in order to enable them to travel by railway from to ?

5. Did any other, and what, company, or companies, or person, either, alone or in conjunction with the defendants, on that day issue tickets at that station for passengers travelling by railway from to ?

6. Did not the defendants, either alone, or in conjunction with some other, and with what, company, or persons, issue tickets at the station in the second interrogatory above mentioned, to persons applying for the same in order to travel by a train starting, or advertised by the defendants as starting, from the said station at , to arrive at at ?

Interrogatories to defendant in an action against a surveyor for negligence in surveying and valuing certain estates. (*Taken from Whateley* v. *Crawford*, *ante*, *p.* 7.)

1. Did you in the month of , 18 , receive instructions from A. B., to inspect and value certain estates of C. D., situate at , in the county of , and did you accept, and act on such instructions?

2. After receiving the said instructions, did you personally visit and inspect the whole, or any, and what part, or parts, of the said estates, and where was such inspection?

3. Did you take any, and what, steps to ascertain the amounts of the different rents payable by the respective tenants of the said estates, for the premises in their respective occupation?

4. Did you apply to the said C. D. to know the amount of the said several rents?

5. Did you apply to the tenants of the said estates, or to any, and to which of them, for the respective amounts of the rents payable by them respectively for the houses, farms, and lands, held by them, and when did you make such application?

6. Did you, as part of the before-mentioned instructions, receive from the said A. B. a list of the various rents at which the several tenants of the said estates were supposed to hold the same?

7. Did you take any, and what, steps to ascertain, whether the said list contained a true account of the said rents? And state the result of such steps.

8. Was one of the farms to which the said instructions applied called , and was the same then in the possession and occupation of E. F.?

9. Did you take any, and what, steps to ascertain at what yearly rent the said E. F. then held the said farm? And state at what rent he did then in fact hold the same, and your means of knowledge as to the amount of such yearly rent.

10. Did you make any, and what, report to the said A. B. as to the amount of the last-mentioned yearly rent, and upon what information was such report founded?

Interrogatories to defendant in action for price of a business. (*This example will be found useful whenever interrogations are required to be administered to the defendant in an action of debt.*)

1. Did you not, in or about the month of , 18 , purchase, or agree to purchase, of the plaintiff, certain stock in trade, materials, and fixtures, and the good will of his business as a , at , in the county of ; and also the lease of the premises where the said business was carried on, and, if so, for what sum, or sums, of money did you agree to purchase, or purchase, the same, or any part thereof?

2. Was not the draft of an agreement for the said purchase prepared, and is not the same in your possession, custody, or power, and if not, where is it?

3. Did you not take possession of the said stock in trade, materials, and fixtures, and of the said business, and of the said premises, and afterwards carry on the said business as the purchaser thereof?

4. Have you not paid some, and, if yea, what sum or sums on account of the said purchase-money?

5. Have you in your possession, power, or control, any letters, papers, writings, or other documents, relating to the purchase by you of the above-mentioned

business, other than the draft agreement in the second interrogatory above mentioned? If yea, give a complete list of such letters, papers, writings, and other documents.

Interrogatories to defendant in an action for money lent, and on an account stated.

1. Did not the plaintiff on or before the day of , 18 , advance and lend to you, or did you not have from him, and on what account, and for what purpose, a loan of £ , or sums of money amounting to £ , or any other, and what, sum or sums? Did you give him, or did he have any, and what, security for the repayment of the same? State the whole of the monies so lent to, or had, by you.

2. Did he not lend to you, or did you not have from him on some, and on what account, or for what purpose, £ , on the day of , 18 ?

3. Did not the plaintiff to your knowledge have an account with, and monies deposited at bank, and did you not have at various times and when, his bank pass-book, showing his account at the said bank? For what purpose did you have it?

4. Did you at any, and at what, time, or times, receive from the said bank any, and what, sum, or sums, of money on the plaintiff's account, or by his order, or authority?

5. Did you ever, and at what time, or times, pay any, and what sum, or sums, of money on the

plaintiff's account at the said bank, and, if so, to whom did the monies so paid belong?

6. Have you, or have you not, at any, and at what, time or times paid any, and what, sum, or sums, of money to the plaintiff, or to the said bank, or to any, and to what, person, or persons on the plaintiff's account in payment of any of the monies lent by him to you, or had from him by you, or as interest for the forbearance of the same?

7. Have you made any, and what, admissions at any, and at what, time, or times, to any, and to what, persons, of your having borrowed, or owing any, and what, monies of, or to, the plaintiff?

Interrogatories to plaintiff in an action by an architect for commission, &c.

1. Did the defendant, in or about the month of July, 1862, enter into a verbal agreement with you relating to the preparing by you of plans, designs, and specifications, and the preparing, or taking out, by you of quantities, for or in respect of a mill, shed, staircase, chimney, engine-house and engine, or of other, and of what, works, situate near , in the parish of , in the county of ; and did the said agreement with you include the measuring of by you of the work to be done by one A. B., the contractor for the said works, and include your checking off the bill or charges of the said A. B., under the contract between the defendant and the said A. B. for the said works; and what was the commission

agreed to be paid to you in respect of the premises, and upon what amount was it to be paid?

2. Was it not expressly agreed by and between you and the defendant that such commission was to cover all your charges for the several matters agreed to be done by you, and for whatever was to be done by you, in relation to the said contract of the defendant with the said A. B., or how otherwise?

3. Did not the defendant at the time of the making of such agreement with you as aforesaid, or at some other, and at what time, expressly stipulate, and did you not then or at some other and at what time, agree with the defendant that you would not accept from the said A. B. or any other person engaged, or to be engaged, in the erection of the said works, or in any way supplying labour or materials for the same, any commission, fee, reward, or gratuity, for or in respect of any plans, specifications, quantities, measuring off, checking accounts, or anything that should be done by you in relation to, or pertaining to, the said works, or the said contract of the defendant with the said A. B.? If it was not expressly so stipulated and agreed, is it not the usage in your profession or trade that a person employed as you were by the defendant in relation to the said works, ought not, and would not, receive any commission, fee, reward, or gratuity, for or in respect of any of the matters before mentioned, from the contractor, or any person, or persons, acting under him in the execution of the contract?

4. Is not a commission of £5 per cent. to an archi-

tect, or surveyor in the case of a contract of such an amount as the amount of the said contract of the defendant with the said A. B., and of the kind of buildings to be erected, such a commission as, according to the general usage and understanding in your profession or trade, would be considered amply sufficient to cover all charges of, and relating to, such matters as were to be done by you, and to exclude the taking of any commission, fee, reward, or gratuity, from the contractor? If not, state what amount would be so.

5. Did you not at some, and at what time, give some, and what, authority to the said A. B., and, if so, was it in writing, or how otherwise, to deviate from the contract, specification, and bill of quantities, and, if yea, did you receive any, and what, instructions from the defendant, authorising you in that behalf? Were any such instructions ever given to you in writing, and, if so, are such writings in your possession or control? If you allege that such instructions were given to you verbally, state what these instructions were, and upon what occasion you received the same.

6. Did you ask for, or receive, from the said A. B., or from any person acting on his behalf, or from any other, and what, person or persons, directly or indirectly, any commission, fee, or per-centage, or any other, and what, reward, or gratuity, for, or in respect of, taking out quantities, or for furnishing, or delivering the same to the said A. B., or any other person on his behalf, or for, or in respect of, the measuring off of

the said work done, or to be done under the said contract of the defendant with the said A. B., or otherwise in relation to the said contract, or any claim, or claims, of the said A. B. in relation to the said works? If yea, state the amount thereof.

7. Did not the defendant give you dimensions, and written, or other, and what, instructions for or in respect of the mill, and other buildings of the defendant which have been erected and built; and did you at any, and at what time, receive any such instructions in respect of plans, or other documents, for any addition to the said mill, and buildings, or for the building of any other mill? If yea, state what these instructions were.

Interrogatories to plaintiffs in an action on a bond given to secure payment of subscription, fines, interest, &c., due to a loan society, where payment has been pleaded. (*From this example a form may readily be framed whenever payment is pleaded to the common or other counts.*)

Were any, and what, payments made by the said J. S. in the declaration mentioned, and by any, and by what, person, or persons, on his behalf to any, and to what, officer or officers, agent or agents, of the society, in the condition of the bond in the declaration mentioned, on account of any, and of which, of the subscriptions, fines, interest, or other payments in the condition of the said bond mentioned. State fully the amounts, dates,

and all particulars of the money so paid by the said J. S., or by any other person or persons on his behalf.

Interrogatories to defendant, executor, &c.

1. When did you first act as the executor of the above-named testator?

2. What goods, chattels, and effects, or other assets, belonged to the said testator at the time of his death?

3. What goods, chattels, and effects, or other assets, belonging to the said testator at the time of his death, have come to your hands as his executor to be administered?

4. Have any, and what, goods, chattels, and effects, or other assets, belonging to the said testator at the time of his death, not come to your hands to be administered?

5. Did you make, or cause to be made, any inventory or statement of the goods, chattels, and effects, or other assets, of the said testator belonging to him at the time of his death; or was any such inventory, or statement made? If yea, by whom, and on whose behalf, was it made, or caused to be made?

6. If such an inventory, or statement was made, when, and in whose possession, custody, or control is it?

7. Did you, or any other person on your behalf, or otherwise, make any, and what, statement, either by oath, or by affidavit, or otherwise, at any, and at what, time, of the value of the goods, chattels, and effects, or other assets of the said testator belonging to him at the time of his death?

8. Have you now, or have you at any other, and at what time, had in your possession, custody, or control, any, and what goods, chattels, and effects, or other assets, of the said testator belonging to him at the time of his death?

9. Has or have any, and what, person or persons on your behalf as such executor, or otherwise, had in his, or their, possession, custody, or control, at any, and at what, time, any, and what, goods, chattels, effects, or other assets, of the said testator belonging to him at the time of his death?

10. Were any, and what, debts, claims, or demands owing to the said testator at the time of his death, and have any, and which, of such debts, claims, or demands, or any, and what, part, or parts thereof, been had, or received on your behalf as such executor, or otherwise?

11. Did any, and what, leaseholds, or estates for terms of years, or other chattels real, belong to the said testator at the time of his death?

12. Did any other, and what, property, at any, and what time, belong to you as such executor as aforesaid, and where is such property?

13. Have you now, or have you at any other, and at what time, had in your possession, custody, or control, any ledgers, books, accounts, or other papers, books, or documents containing any entries relating to the goods, chattels, and effects, or other assets or property of the said testator at the time of his death?

14. Had the testator, at the time of his death, any,

and what, sum or sums, amount or amounts, of property, in any and in which of the Government or other public stocks?

15. Was there any other, and what, property, estate, interest, claim, or demand, not included or referred to in the preceding questions, which, at the time of the death of the said testator, belonged to him, or to which he was then entitled, or in respect of which he then had any, and what, claim, or demand, belonging to you as his executor, or to which you, as his executor, would be or have been, at any, and at what time, or now are entitled?

Interrogatories to defendant, executor, &c., who has pleaded "*plene administravit.*" (*These interrogatories have been often allowed at chambers, and have been also sometimes considerably curtailed; doubtless some of them contravene rules which have been laid down in decided cases; but, as they have been sometimes allowed, and are very useful if leave can be obtained to administer them, such questions are often attempted.*)

1. Say what monies you have received from the real or personal estate of the testator, specifying as to each receipt the following particulars, viz. the amount received, the person from whom received, and the date of its receipt; and in case of debts received, the amount of the debt, and the name of the debtor, and in case of property sold, realized, or converted into money, the nature of such property, the date or dates

of such sale or sales, and the person or persons to whom sold.

2. What debts, if any, were contracted by the testator and left unpaid at the time of his death, or afterwards became payable? State the names and addresses of the persons with whom they were contracted, or the persons who, at his death were or afterwards became, creditors in respect of the same, and entitled to the payment thereof out of the personal estate and effects of the said testator. State the amount of each of such debts payable at or before his death and when contracted, and whether the same are simple contract, or specialty debts, or debts of record.

3. Have you paid, or satisfied, the same debts in the second interrogatory mentioned, or any, or either, and which of them?

4. State what property of the testator has been disposed of otherwise than by conversion into money, and to whom, and when, and on what account, and what is the value of such property.

5. State what property of the testator remains unrealized and undisposed of, and the nature and value of such property, and what, if anything, prevents the realization thereof.

6. State what, if any, amount you have paid for the testator's funeral expenses.

7. State what probable duty was paid on the testator's will; and whether any, and what, legacy-duty has been paid in respect of any legacy contained therein,

and whether a residuary account of the testator's estate has been furnished to the Commissioners of Inland Revenue, and when, and whether you have a copy of such account.

Interrogatories to defendant in an action of ejectment as to whether he is defending on his own responsibility. (*Interrogatories may readily be framed from this example, whenever their object is to discover whether the defendant is the real or only the nominal defendant. The application would have to be supported by a somewhat special affidavit, setting up some ground for the supposition, that the person appearing as defendant was not interested in the action, or was indemnified against the cost, otherwise the interrogatories would be "fishing."* See *Moor* v. *Roberts*, 26 L.J., 246 C.P.)

1. Is not A. B., of London, the real defendant in this action, defending it in your name to protect his own interest? (*If you answer the above question positively in the affirmative without qualification, you need not answer any of the following interrogatories.*)

2. Was the copy of the writ by which this action was commenced ever delivered to you, or to any one on your behalf? If not, when, as near as you can remember, did the fact that the said writ had been issued, or that this action was commenced against you, first come to your knowledge.

3. Did you ever, and when, as near as you can re-

member give, or instruct, or authorize, any one, and whom, to give, notice of the said writ, or of the said action to A. B., or to any one on his behalf? If yea, did you do so because you considered the said A. B. to be your landlord? Where does the said A. B. reside? Did you instruct, or authorize, Mr. C. D. to appear for you in this action?

4. Is there any agreement, arrangement, or understanding, according to which you are not to pay, and the said A. B. is to pay, the said Mr. C. D. the costs of defending this action, or any part thereof. If yea, what is it?

5. Did the said A. B., or any one on his behalf, and who, do any, and which, of the things mentioned in the following paragraphs, numbered from 1 to 6, both inclusive?

(1. Apply to you for leave for the said C. D. to enter an appearance in your name in this action.

2. Apply to you for leave for the said C. D. to defend this action in your name.

3. Agree that the said A. B. should indemnify you against the plaintiff's costs in this action, or some part thereof.

4. Agree that the said A. B. should indemnify you against the costs of the defence of this action, or some part thereof.

5. Employ the said C. D. to defend this action.

6. Agree to pay the said C. D. the costs of the defence of this action, or some, and what, part thereof.)

6. Have you any, and what, reason to suppose, or believe that the said A. B. will indemnify you against the plaintiff's costs in this action, or any, and what, part thereof?

7. Have you any, and what, reason to believe that the said A. B. will pay the costs of the defence of this action?

8. Have you any, and what, reason to suppose, or believe, that the said A. B. claims to be entitled to the rents of the said premises, or any of them?

9. Have you paid rent for any part of the said premises to the said A. B., or to any one, and whom, on his behalf, and for how long have you done so?

10. Have you in your possession any receipts for rent paid by you in respect of the said premises during the last six years, and what are the dates of those receipts?

Interrogatories to plaintiff in an action of ejectment. (Taken *from Fliteroft* v. *Fletcher*, 25 L.J., 94 Ex.)

1. In what character, or in what right, do you, and each of you, claim to be entitled to the possession of the premises claimed by you in this action?

2. Do you, or any of you, claim to be entitled to the same as heirs at law of H. F. deceased?

3. If so, how do you allege that you, or any of you, are his heirs at law, and through what links do you claim such heirship?

4. Do you, or any of you, claim to be entitled as

grantees from, or trustees for, any person, or persons, claiming to be heirs at law of the said H. F.?

5. If so, who is, or are, the person, or persons, whose grantees or trustees, you, or any of you, claim to be, and how do you allege that such person, or persons, is, or are the heirs at law of the said H. F., and through what links do you trace such heirship?

6. Have you, or any of you, any right to, or interest in, the said premises except as aforesaid, and, if so, what is the nature of such right or interest?

Interrogatories to defendant in an action for the infringement of a patent. (*Taken from Tetley* v. *Easton and Another*, 25 L.J., 293 C.P.)

1. Did you manufacture the centrifugal pump now in, or being erected in, the Crystal Palace, at Sydenham, upon which the name of your firm is inscribed?

2. Did you exhibit that pump at the late Exhibition in Paris, in 1855? If not, for whom did you manufacture it, and to whom did you sell or lend it? and if you have since made any variations in its construction, state what those variations are.

3. Did you manufacture the centrifugal pump erected now, or late in use at the Tottenham sewage works, in the county of Middlesex? And, if so, by whose order did you manufacture it, and when, and where, was it manufactured, and delivered? and state the names, and addresses, of the persons, or person, to whom you sold it, and at what price.

4. How many centrifugal pumps have you made and sold between the 21st of April, 1855, and the 5th of May, 1856? And state whether any, *and* which out of the whole number so made and sold between those dates, had or had not, foot valves, or retaining valves.

5. Distinguish how many of these were sold and delivered previously to the first-mentioned pump being exhibited in Paris, and how many since.

6. State the names and addresses of the several persons to whom the said pumps respectively have been sold within the said periods, and the prices at which they were respectively sold, together with the diameter of the apertures into the pans of such pumps respectively.

7. Where are, or were, the said pumps respectively in use, or sent to be used? And are any of them, and which, now under your control? Mention those especially which to your knowledge now are, or within the last three months have been, in use within fifty miles of London.

Interrogatories to plaintiff in an action for a malicious prosecution, on a charge of having obtained money by false and fraudulent pretences. The alleged false pretences consisted in representations made by the plaintiff that he had disbursed sums of money for the defendant's wife and daughters at Rome and at Paris. (*Taken from Zychlinski* v. *Maltby*, 10 C.B., 839.)

1. Did you, in or about the month of March, 18 ,

at Rome, become acquainted with Mrs. M., the wife of the above-named defendant, the Rev. H. M., and his two daughters?

2. Did you at any time, and when, at Rome, receive from the said Mrs. M. the sum of 1000 Roman scudi, or some other and what sum? And, if yea, for what purpose or purposes did you receive such money?

3. Did you at the time when you received such money from her, or at any other time, know that C. A. had lent her a sum of 1000 scudi, or some other and what sum?

4. Did you receive such money from her for the purpose of paying for her, or on her account, debts contracted or owing by her at Rome?

5. Did you pay any and what sum or sums of money, at Rome, for or on account of the said Mrs. M.? And, if so, state particularly all the sums which you so paid, and to whom respectively, and when.

6. Did you at any time, and when, pay a sum of 152 scudi, or some other and what sum, for or on account of the said Mrs. M., to the brothers S., confectioners at Rome?

7. How much money in all did you pay for or on account of the said Mrs. M. at Rome? And if on any other account than in payment of the debts specified by you in answer to the fifth interrogatory, on what account or accounts, and to what amount, and in what sums, and to whom paid?

8. Did you receive at Rome from the said Mrs. M. and her daughters, or from any or either of them, a

sum of 340 francs, or thereabouts, for the purpose of the same being deposited by you, on their account, or on the account of any of them, in the Monte di Pieta, or some bank, at Rome? If yea, did you so deposit the said sum? And if so, in what name did you so deposit it? And, if you did not so deposit it, what did you do with such money?

9. Did you receive from or on account of the said Mrs. M., at Paris, in or about July, 1860, the following sums, or any and which of them, viz. the sum of £15 from Mr. A. B., £17 from the proceeds of the sale of some jewelry, £25 from Mr. M., £7 from Mrs. M., and, in September, 1860, £60 from Mrs. M., or some other, and what sum or sums, from the said persons respectively, or any and which of them?

10. Did you make any and what payment or payments for or on account of the said Mrs. M., at Paris, or on the journey from Rome to Paris, or on the journey from Paris to England? And, if so, state particularly the sum or sums you so paid, and on what account, and when.

11. Did you at any time, and when, in 1860 or 1861, remit from Paris to one Koll, a banker at Rome, or to any other and what person at Rome, a sum of 4000 francs, or any other and what sum, for the purpose of paying debts contracted and owing by the said Mrs. M. at Rome?

12. Were you ever, and when, a captain in the Cavalry Guards, or the Guards of Alexander the Second, Emperor of Russia? And did you ever hold

any and what rank, or ever serve, in the Russian army? And did you ever represent to Mrs. M. and her daughters, or to any of them, that you had been or were a captain in the Cavalry Guards, or the Guards of the said Emperor of Russia?

13. Are you, and when did you become, a knight or chevalier of any and what order or orders? And did you ever represent to Mrs. M. and her daughters, or to any of them, that you were a knight or chevalier of any order or orders?

14. Did you ever serve in the Russian army, or in any other and what army, in the Crimea during the siege of Sebastopol? And were you wounded whilst in the Crimea? And did you ever make any representation or representations to that or the like effect to Mrs. M. and her daughters, or to any of them?

15. Did you ever, and when, serve in the Prussian army as a volunteer or otherwise? And when and for what reason and under what circumstances did you leave such army? Were you not, and were you not adjudged to be, a deserter from the Prussian army?

16. Had you, on or about the 18th of September, 1860, an interview at Nottingham with the defendants and others? And did you on that occasion bring a person with you who acted as interpreter between you and the defendant on that occasion? Was that person then in your employ or service as your secretary or otherwise? And is he so still? Or, if not, when did he cease to be your secretary or servant? What is his name, and where is he now, and

when last did you see him, and when last did you hear from or of him, and where was he when you last saw him and last heard from or of him?

17. Was the said person with you in the Crimea during the siege of Sebastopol? And had his father been secretary to your father? And did you authorize the said person to make, or did he with your knowledge and consent make, a representation to that effect at the said interview at Nottingham?

18. Did you at that interview state or represent that you had advanced to and for Mrs. M. monies to the value and amount of £400, or thereabouts?

A reference to the report will show what interrogatories were struck out, the objection to them being that they were irrelevant.

Interrogatories to officers of railway companies in an action against the company for injuries sustained by a passenger, as to the cause of the accident by which the injuries were caused.

1. What are the names and addresses of the guard, or other servant or servants of the defendants, who was or were attached to the train of the defendants which was to have left the L. station on the day of last, at about o'clock, and of the porters and other servants of the defendants who were at the said station at that time?

2. Did a truck run against the said train whilst the said train was stopping in the said station, and did you see a truck, not being part of the said train,

close to the said train, where the said truck ought not to have been? And did you hear a noise as if the said truck or something else had run against the said train? And did the said truck belong to the defendants, and was it under the care of any servant or servants of the defendants, and what is or are the name or names, address or addresses, of such servant or servants?

3. Did the said truck run against the said train with so much violence as to cause a sudden shock to the said train, or to cause the said train to be suddenly moved?

4. What caused the said truck to run against the said train?

5. What put the said truck in motion? At what distance from the said train was it when first put in motion?

6. Was it or was it not attached to an engine when it ran against the said train?

7. Had it been moved by an engine? And when it ran against the said train, was the motion given to it by the engine still continuing?

8. At what distance from the said train was the said truck at the time when it became separated from, or ceased to have motion imparted to it by the engine which had put it in motion?

9. At what rate, as near as you can judge, was the said truck moving when it ran against the said train? And what is the highest rate of velocity which you will swear it did not exceed?

10. Had the said truck any break or other appliance annexed to it for stopping it, or retarding its velocity, when moving?

11. Have the defendants ever had in their possession any report or reports, letter or letters, writing or writings, relating to the said collision between the said truck and the said train, and to the claim of the plaintiff against the defendants in respect thereof, or to either, and which of those matters? If yea, how can they be respectively described, and if they or any of them are not now in the possession or custody of the defendants, what has become of them respectively?

Interrogatories to female defendant who has pleaded coverture in abatement. (*Interrogatories such as these have been allowed at chambers on several occasions, but have never been before the court, and it is thought that if such an application were resisted, they must be disallowed as asking matter which relates exclusively to the case of the other party.*)

1. When and where were you married to your present husband F. P., in the pleadings in this cause mentioned, and what are his names, occupations or businesses?

2. Where does your said husband now reside, and how long has he resided there?

3. Has your said husband ever resided with you at your present place of business, No. , Street,

in the city of , and, if so, when did he last do so?

4. Have you ever been divorced or judicially separated from your said husband?

Interrogatories to defendant in an action by widow to recover dower from the heir of her late husband.

1. Were you at the commencement of this suit in the receipt of the rents or profits, or of any and of what part thereof, of certain lands and premises, situate, &c., called, &c.? If so, how long had you been in receipt of such rent or profits, and what is the total amount of such rents or profits received by you or on your account?

2. Do you receive or claim such rents or profits as heir to the late A. B.? And, if not, under and by virtue of what title do you claim or receive the same?

3. Have you a freehold in, or have you any and what estate in the said lands and premises, or in any and in what part thereof?

4. What is the net rental of the said lands and premises, and who are the tenants and occupiers thereof?

5. Have you ever, or has any one on your behalf, at any and what time, paid any and what sum to the plaintiff on account of her claim for dower, out of the rents and profits of the said lands and premises, or of any part thereof?

Interrogatories to discover the contents of a lost written document. (*Taken from Wolverhampton Waterworks Company* v. *Hawksford*, *ante*, p. 51.)

1. Did you subscribe or authorize any one to subscribe for you for £6000 to the undertaking of the said company, and did you sign or execute, or authorize any one to sign or execute for you a subscription, contract, or document, as the subscription contract required to be made before the company could go to Parliament to obtain their Act of Parliament?

2. Did you know Robert Baker, who was a clerk to Messrs. Corser and Underhill? Did you execute the contract in his presence?

Interrogatories to defendant in action by indorsee, against maker of a promissory note. Plea—that defendant had executed a deed of arrangement under the provisions of the Bankruptcy Act, 1861. Replication—That divers of the debts of the majority in number of the creditors who assented to the deed were contracted by the defendant fraudulently, and for the sole purpose of creating a body of creditors, of small amount, who should make up the majority in number required by the Act to assent to the deed; and that many of the debts were contracted to clerks and servants of the defendant by letting their wages become in arrear, it being intended to pay them, and they having been paid, in full after

the registration of the deed; and that without the creditors in the replication mentioned, there would have been no such majority as in the plea mentioned. (*Taken from Bayley* v. *Griffiths*, 31 L.J., 477 Ex., the authority of which case as to such interrogatories has been expressly recognized in *Goodman* v. *Harvey*, 3 N.R., 512.)

1. What business did you carry on prior to the 20th of February, 1862; and where was your office or place of business, and where were your manufactories?

2. Who first suggested the deed mentioned and set forth in the plea in this action; who named the trustees therein, and applied to them to act? Are they, or is either and which of them creditors; and, if so, for what amount or amounts? Were they, or was either of them, in your employ prior to the 20th of February, 1862, and are they, or is either and which of them now in your employ?

3. Set out when and where you executed the deed, and when and where it was executed by such trustees.

4. Was there any meeting of your creditors held prior to the 20th of February, 1862? If you allege that there was any such meeting, set out by whom it was called, when and where it was held, and by whom it was attended, and what passed at such meeting.

5. Who applied to the creditors for their consent or approval of the deed? Set out the names, ad-

dresses, and occupations of the persons who have assented to or approved of the deed, the date of each approval or consent, and the amount of each debt, distinguishing those persons who held security, and setting out the nature of the security held by each.

6. Have you paid to any, or either, and which of the persons who assented to and approved of the deed, the whole or any part of the debts in respect of which they proposed so to assent or approve? If so, set out the date and amount of each such payment.

7. Have any or has either, and which of the persons who consented to or approved of the deed, and at that time held security for their debts, realized or received the securities held by them, or him, or otherwise been paid the amount of their, or his, debts? If so, set out the amounts received by each such creditor, and the date of such receipt.

8. Have any or has either, and which of the creditors who assented to and approved the deed, received from any source whatever the whole or any part of the debts in respect of which they, or he, so assented or approved? If so, set out the name, or names, of the person, or persons, who have so received, and the date and amount of each receipt.

9. Set out a full list of the debts and liabilities due or incurred by you prior to the 20th of February, 1862, with the names, addresses, and occupations of each of your creditors, the amount of the debts due to each, and the securities held by each.

10. Had you, prior to the 20th of February, 1862,

and have you now in your custody, possession, or power, or in the custody, power, or control of your attorney, solicitor, or agents, any books, ledgers, papers, letters, documents, memorandums, or writings relating to your business transactions prior to the 20th of February, 1862? If so, set out a full and perfect list of such books, ledgers, papers, letters, documents, memorandums, or writings, and if you allege that you had any of such matters prior to the 20th of February, 1862, but have since parted with them, or either of them, set out when you last saw such document, where, why, and to whom you parted with it, and in whose possession it now is.

11. Set out a list of the papers or writings by which the creditors assented to, or approved of, the deed referred to in the plea.

INDEX.

THE END.

C. WHITING, BEAUFORT HOUSE, STRAND.